Affirmed - Davis
reversed
Read

SUPREME COURT OF THE UNITED STATES.

No. ~~147.~~ 76.

THE CHENANGO BRIDGE COMPANY, PLAINTIFFS IN ERROR,

vs.

THE BINGHAMTON BRIDGE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

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INDEX.

	Original.	Print
Citation and service	1	1
Writ of error	2	1
Proceedings in Broome county court	5	2
Judgment	17	10
Proceedings in court of appeals	93	56
Judgment	96	57
Bond for costs	98	58
Clerk's certificate	101	59

Citation.

1 UNITED STATES OF AMERICA, *ss:*

To the Binghamton Bridge Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error which will be filed in the supreme court of the State of New York, at and in the clerk's office at Binghamton, in the county of Broome, wherein the Chenango Bridge Company are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Nelson, one of the justices of the said Supreme Court of the United States, this 28th day of October, in the year of our Lord 1863.

S. NELSON,
Justice of the Supreme Court.

BROOME COUNTY, *ss:*

On this 4th day of November, in the year of our Lord 1863, we admit due and personal service copy of the within citation on us at Binghamton, in the State of New York, and we have this day received from the clerk of the supreme court in Broome county a copy of the original writ of error in the above-entitled action.

DICKINSON & WRIGHT,
Atty's for Def'ts in Error.

2 Filed Nov. 4, 1863.

Writ of error.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you or some of you, upon a remittitur from the court of appeals of the State of New York, said court of appeals being the highest court of law or equity of the said State, in which a decision could be had in the said suit, between the Chenango Bridge Company, plaintiffs, and the Binghamton Bridge Company, defendants, wherein was drawn in question the validity of a statute of said State, or an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said the Chenango Bridge Company, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you

have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to
4 be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-two.
[SEAL.]

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States for the Southern District of New York.

Allowed by
S. NELSON,
Justice of the Supreme Court of the United States.

Filed Nov. 4th, 1863.

5 Supreme court—County of Broome.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Notice of appeal from judgment.

Please to take notice, that the plaintiffs in the above-entitled action appeal from a judgment entered therein on the twenty-third day of March, 1858, in favor of the defendants against the plaintiffs, for seventy-seven dollars and one cent, and from each and every part of said judgment, to the general term of this court.

Dated May 5th, 1858.

Yours, &c.,
HENRY R. MYGATT,
Attorney for Plaintiffs.

To DICKINSON & WRIGHT, Esqs.,
Attorneys for Defendants, and
WILLIAM C. DOANE, Esq.,
Clerk of the County of Broome.

Judgment roll.

State of New York.—Supreme court—Broome county.

THE CHENANGO BRIDGE COMPANY, plaintiffs,
against
THE BINGHAMTON BRIDGE COMPANY, defendants.

Summons—for relief.

To the defendants: You are hereby summoned, and required to answer the complaint in this action, with a copy whereof you are herewith served, and to serve a copy of your answer to the said complaint on the subscriber, at his office in Oxford, in said county of Chenango, within twenty days after
6 the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time afore-

said, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated Oxford, May 5th, 1856.

HENRY R. MYGATT,
Plaintiff's Attorney.

State of New York.—Supreme court—Broome county.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Complaint.

The Chenango Bridge Company, plaintiffs, complain of the Binghamton Bridge Company, defendants, as follows: That the plaintiffs are, and for nearly fifty years have been, the owners and proprietors of the Chenango bridge in the village of Binghamton. That during all that time, except when it has been necessary to rebuild the same, they have kept and maintained a suitable and safe bridge across the Chenango river in said village for the accommodation of the public, who have been largely benefited thereby. That they were duly incorporated by an act of the legislature of the State of New York, passed April 1st, 1808, and by said act and previous acts of the said legislature referred to therein, were vested with the right to build said bridge, to collect and receive certain specified tolls for the use thereof, with perpetual succession, and other rights, powers, privileges and immunities therein bestowed. That it was particularly specified and agreed in the said acts, that it should not be lawful for any person or persons to erect any bridge or establish any ferry within two miles above or below the bridge of the plaintiffs; that no power to alter, modify or repeal said charter was in any manner reserved therein, but that the same was an absolute, unconditional and unlimited contract with the plaintiffs. That in pursuance thereof, and about the year 1808, the plaintiffs performed their part thereof by the erection of a bridge in conformity thereto; that
7 they have since been compelled twice to rebuild it at great expense; that they have in good faith kept up and maintained the same until the present time, and have at all times claimed and acted upon the privileges so granted them as aforesaid. That all the inhabitants now living and owning property upon said river within said two miles, and most of the owners of real property in the town, have purchased and acquired their property long since the plaintiffs have openly claimed and enjoyed the privileges given them by their charter. That about the year 1826, Hazard Lewis and others of the citizens of Binghamton presented a petition to the legislature, setting forth that the charter of the plaintiffs forbid the building of another bridge within two miles, and asking that the same might be amended so as to allow the building of another bridge; that the judiciary committee of the assembly, to whom the same was referred, reported that the amendments asked for would be unconstitutional, and that thereupon and for that reason the legislature refused to grant said petition. That about the year 1845, the said Hazard Lewis with others applied to the legislature for a charter to build another bridge within said two miles; that the judiciary committee again reported it unconstitutional, and the legislature thereupon refused to grant the said charter. That in the year 1854, said Hazard Lewis and others again renewed said application, and that by order of the senate the matter was referred to the attorney general of the State for his opinion thereon; that he reported that the

bill, if passed, would be unconstitutional and void, and that the same did not become a law.

That upon the faith of the legislature, thus commenced and continued, all the stockholders of the plaintiffs have purchased their stock; that a large majority of them have become the owners thereof since 1845; that by reason of the several declarations by successive legislatures that the contract with them was inviolable, and that they did not claim any right to interfere therewith, said stockholders have purchased their stock at greatly increased prices, and have paid therefor much more than they would otherwise have done; and they insist that by reason thereof, if any doubts had previously existed as to the inviolability of their charter, that the same would have been removed, and that the legislature were thenceforward estopped from any interference therewith.

And the said plaintiffs further complain, that the said defendants have commenced and have built a bridge across said Chenango river above and about eighty rods from the bridge of the plaintiffs; that the same is intended to and will in fact divert a considerable share of the travel that would otherwise cross the bridge of the plaintiffs, and will cause a large diminution in the income and tolls thereof, and greatly depreciate the value of the same. That said bridge is so far completed that it has been opened for travel, and that divers persons have passed over and thus avoided the payment of the tolls which would otherwise have been received by the plaintiffs. That said defendants do not collect toll upon the same, but allow the public to use it as a free bridge, and that the damages of the plaintiffs are greatly and unnecessarily increased thereby. That said bridge is built under a pretended authority derived from an act of the legislature of the State of New York, passed April 5th, 1855, entitled "An act to incorporate the Binghamton Bridge Company," but the plaintiffs deny that said act has any validity, force or effect; but on the contrary, they insist that the same is in violation of the contract of the State with the plaintiffs, and is unconstitutional and void.

And the said plaintiffs further show, that they duly remonstrated against the passage of said act, and that they have constantly and openly insisted upon and asserted their rights under their said charter, to forbid the building of said bridge, and have from time to time notified the defendants that they should hold them responsible for all loss and damage they might sustain in consequence of the building of said bridge by the defendants. And the said plaintiffs aver that said pretended charter, if it was valid, would not authorize defendants to erect or maintain a free bridge.

Wherefore the said plaintiffs demand judgment that the said defendants be perpetually enjoined from constructing, completing, using or allowing to be used, the said bridge so commenced by them as aforesaid, and from receiving any tolls, or in any manner receiving any compensation for crossing their said bridge, and that they be required to remove or shut up the same, so that it cannot be used to the injury of the plaintiffs, and that the defendants be adjudged to pay the plaintiffs a pecuniary compensation in damages by reason of the premises to five thousand dollars claimed by plaintiffs, and that the plaintiffs may have such further or other relief, decree or judgment, as shall be agreeable to equity, together with costs of this action, and the disbursements allowed by law.

HENRY R. MYGATT,
Attorney for Plaintiffs.

STATE OF NEW YORK, *Broome County, ss:*

James S. Hawley, being duly sworn, says that he resides at Binghamton, in said county of Broome, and that he is the president of the "Chenango Bridge Company," plaintiffs in this action, and that he has read the above

complaint, and that the same is true to the knowledge of this deponent, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

(Signed) JAMES S. HAWLEY.

Sworn to before me this 13th day of May, 1856.

C. TYLER, *Justice of the Peace.*

Supreme court—Broome county.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Answer.

The defendants in this action, answering the plaintiffs' complaint, admit that for a long time, but for how long they are unable to state, an association of individuals, under the name of the Chenango Bridge Company, have maintained a bridge across the Chenango river in the village of Binghamton, and have demanded and received a large amount of tolls of the inhabitants of said village, and of the travelling public crossing said bridge, equal in amount to one-fourth and upwards of the capital invested therein, annually, as the defendants are informed and believe; and they deny that the public have received any benefit, accommodation, or advantage, by reason of said bridge since its erection, except that they have been permitted to cross the same by paying a toll to said association, amounting, for a considerable share of the time, to twenty-five per cent. and upwards of the capital invested in said bridge, annually.

And the defendants further say, that they have no knowledge and not information sufficient to enable them to form a belief whether the said plaintiffs were duly incorporated in 1808, or at any other time, or if so incorporated, what were the terms, conditions and provisions of said charter, and they leave the plaintiffs to prove the same. But the defendants answering, deny that by any act of incorporation, or chartered privilege, given or granted to the plaintiffs by the people of this State, through acts of the legislature or otherwise, it was specified, provided or agreed, that it should not be lawful for any person or persons to erect any bridge or establish any ferry within two miles above or below the bridge of the plaintiffs, or that any such charter, grant or contract, or any other charter, grant or contract, was ever given, entered into or made, or now exists, or has at any time existed, between the people of this State and the said plaintiffs, by virtue of an act of the legislature or otherwise, preventing the people of this State, through the legislature or otherwise, from giving or granting to any person or persons any other bridge, charter or charters, to cross said river within two miles of the plaintiffs' bridge, whenever, in the judgment of the people and of the legislature, such other and additional bridge should become necessary to the public interests.

The defendants admit that said plaintiffs' bridge was erected many years since, and has been maintained until the present time, but whether the plaintiffs have at any time or times claimed the exclusive privilege of maintaining a bridge across said Chenango river, in the village of Binghamton, or what pretended privileges they have claimed, or whether all the inhabitants now living and owning property on said river within two miles, or most of the owners of real property in the town, have purchased and acquired their property long since the plaintiffs have openly claimed and enjoyed the privileges given them

by their charter, the defendants have no knowledge and not information sufficient to enable them to form a belief.

They deny that the said plaintiffs have at all times, since the erection of their said bridge, claimed the exclusive right to maintain a bridge across said Chenango river within two miles above or below their said bridge; but the defendants say that in or about the year 1832, and by subsequent acts, the legislature authorized the New York and Erie Railroad Company to erect a bridge across said Chenango within two miles of the plaintiffs' bridge for the purpose of carrying animals, freight and passengers, across said river; that said
11 bridge was erected in or about 1848, within one hundred rods of the plaintiffs' bridge, and that since its erection, large numbers of persons in cars, large quantities of freight and living animals, and large numbers of foot passengers, have passed over said bridge daily, and though well known to the plaintiffs, they have at all times acquiesced in the act of said legislature, and in the erection of said bridge and in the passing over the same of passengers in cars, freight, animals and foot passengers, and still acquiesce therein.

The defendants further answering, say they have no knowledge and not sufficient information to enable them to form a belief, whether, in 1826, the said Hazard Lewis and other citizens of Binghamton, or any other person or persons, presented any petition to the legislature on the subject of said Chenango bridge, nor if so, what said petition contained, nor to what committee, if any, it was referred, nor what, if any, was the action of said committee, nor whether the legislature considered or acted upon said matter, nor if so, what was its action or decision thereupon, nor whether again in 1845 the said Hazard Lewis, with others, again applied to the said legislature for a charter to build another bridge within said two miles, nor to what committee, if any, it was referred, nor what, if any, was the action of the said committee thereupon, nor whether the legislature refused to grant a charter in pursuance of said application. They admit that in 1854, the said Hazard Lewis and others, comprising a large share of the inhabitants of said village and adjoining towns, applied by petition for the erection of another bridge across the Chenango river, in the village of Binghamton, about eighty rods from the said plaintiffs' bridge, and that by order of the senate, to which branch of the legislature said petition was presented, the said application was referred to the attorney general of the State for his opinion thereon, as set forth in said complaint; but the defendants deny that said attorney general reported that it would be unconstitutional to authorize the petitioners to construct a bridge in pursuance of said application, as stated in the plaintiffs' complaint, and say that said attorney general reported and gave his opinion to the senate upon said application, among other things, as follows: "That the weight of authority is in favor of the constitutionality of the law as not repugnant to the Constitution of the United States;" and the defendants admit that the said bill did not become a law as set forth in said com-
12 plaint, but they say that although resisted by the remonstrances of the plaintiffs claiming an exclusive right before said legislature, that it duly passed both the senate and assembly thereof, and only lacked the signature of the governor; that after it had passed both houses of the legislature, as aforesaid, and was, according to the course of legislative proceedings, on its way to receive the signature of the governor, it was surreptitiously taken from the possession of said legislature and secreted or destroyed, and the defendants say that it failed to become a law, because it was thus abstracted from the possession of the legislature, and not by reason of the adverse opinion, decision or action of the legislature thereupon, or of any co-ordinate branch thereof.

And the defendants say that they have no knowledge, and not sufficient information, to enable them to form a belief, upon what particular faith or inducement the stockholders in the plaintiffs' bridge purchased their stock, nor at

what particular time or times a majority of them became owners thereof, nor what views they or any of them entertained of the action of the legislature, nor whether said stockholders purchased their stock at increased prices, nor whether they paid more therefor than under other circumstances they would have done; and the defendants say, that whatever may have been the doubts, views, conclusions or actions of the stockholders in the plaintiffs' bridge, or a majority of them, or any other number thereof, touching legislative action in the premises, and whether said doubts would have been or were removed or not, they deny that the legislature were estopped by reason of the action thereof, or otherwise, from granting such charters for bridges across the Chenango river within two miles of the plaintiffs' bridge or otherwise, as the public interest or convenience might in the judgment of the legislature require.

And the defendants, further answering, say that the inhabitants of the village of Binghamton and the adjoining towns, together with the president and board of trustees of said village of Binghamton, and the board of supervisors of the county of Broome, applied to the legislature of the State, at the session commencing in January, 1855, by petition, for the erection of an additional bridge across the Chenango river, in the village of Binghamton, upon the ground that the same had become essential and necessary to the public interest, which
13 said petition of the inhabitants was in the words and figures following, to wit:

"*To the honorable the legislature of the State of New York, in senate and assembly convened:*

"The undersigned, inhabitants of the village of Binghamton and its vicinity, in the county of Broome, represent: That said village is situated at the confluence of the Susquehanna and Chenango rivers, and has a population of about ten thousand. That the village covers the point between the rivers, and extends to the opposite side of both. That since the construction of the New York and Erie railroad, which crosses the Chenango river about one mile from the mouth, the village has rapidly extended up said river, on both sides, and has largely increased, particularly upon the westerly side. That for a great number of years there have been bridges over both the Chenango and Susquehanna rivers, and that at the session of the legislature before the last, by reason of the increased population and business, an additional bridge was authorized over the Susquehanna, about one half mile above the old one, which has been constructed and is now in use. That an additional bridge over the Chenango is more necessary than one over the Susquehanna, and that at the last session of the legislature an application was made to authorize an additional bridge across the Chenango, to be erected nearly one half mile above the old bridge, which application was opposed by the old bridge company, claiming that it enjoyed a charter monopoly; the petitioners are, however, informed and believe that a bill, authorizing said additional bridge across the Chenango, passed both branches of the legislature, but was afterwards mysteriously missing, and must have been improperly and privately taken from the files by some one opposed to its passage, before it reached the governor, as it has never since been found. They represent that the depots of all the railroads are on the easterly side of the Chenango, above where it is proposed to locate the new bridge; that said railroad depots occasion much travel to and from them, to and from the westerly side of the Chenango river, and that those who would cross in the vicinity of said depots are compelled to go nearly one half mile down the Chenango river, and up it again on the other side, to and from the depots, thus losing nearly one mile of travel upon every such occasion. That a large volume of
14 travel constantly passes over said old Chenango bridge, so great, that it is frequently blocked up by waiting for some to pay toll and otherwise,

to the hindrance of travellers and citizens, and especially upon public days and funeral occasions. That all the churches, except the Catholic, are situated, and the principal business streets are upon the easterly side of the Chenango, and that the new, and hereafter to be principal public cemetery is situated upon the westerly side of the Chenango, about one mile above the old bridge. That the river is subject to high freshets and ice floods, and that in case the present bridge across the Chenango should be carried away there would be no means but a railroad bridge, where travel is not permitted, of reaching said churches, nor the business street from the westerly side of the Chenango, or the cemetery from the easterly side, nor could numerous citizens who reside upon the westerly side of the Chenango reach their places of business. That by reason of the great amount of travel over the present bridge and other causes it is frequently out of repair, so that only one side of it can be used, and at such times it is passed only with great delay and difficulty. The petitioners, therefore, pray for the passage of an act authorizing the construction of an additional bridge across the Chenango, in said village, connecting the first and third wards thereof, between the present bridge and the New York and Erie railroad, as demanded by the actual necessity of the community.

"Binghamton, December 20, 1854."

That said petition was referred, and upon the hearing thereof, in the due and usual course of legislation, the said legislature granted the prayer thereof, upon the ground that another and additional bridge, to be located according to the prayer of said petition, was demanded by and was necessary and essential to the public interests, and therefore passed an act incorporating the defendants, and authorizing them to erect said bridge according to the prayer of said petition, which said act of incorporation is chapter 144 of the session laws of 1855, and is entitled "An act to incorporate the Binghamton Bridge Company," passed April 5, 1855, and was and is, as the defendants are advised and believe and allege, a valid, authentic and constitutional act, and duly authorized the erection of the said Binghamton bridge, according to the tenor and effect of the said act of incorporation; and the defendants admit that they have proceeded to erect said bridge within the time and times, and in the manner, provided in said act of incorporation; they deny that said bridge is intended to divert travel from the plaintiffs' bridge, but say that it was designed to accommodate public travel, and the inhabitants of said village and the adjoining towns; and they admit that a portion of the travel which will cross defendants' bridge would, if no bridge had been erected there or in the vicinity, have been forced out of its way, and at great inconvenience, across the plaintiffs' bridge, and that to the extent of the tolls for such public travel, the income of the plaintiffs' bridge will be diminished.

And the defendants, further answering, say they admit that their said bridge has been so far completed that it has been opened for travel, though it has not yet been fully finished, nor the sidewalk and embankments leading to and connecting with it been made complete; they deny that it is kept open as a free bridge, or that the public have been allowed to use it as such, but say, immediately after the construction of said bridge, so as to enable persons to cross the same, they erected a temporary toll-house thereon, and appointed a person to receive tolls on the same; that by reason of the unfinished state of the streets leading to said bridge, there was little travel across the same except inhabitants of said village, and that said inhabitants have mostly paid commutations to the plaintiffs' bridge, and were and still are entitled to pass the same without further payment of tolls to the plaintiffs; that by reason of the unfinished state of the defendants' bridge and toll-house, it has not been practicable at all times to demand and receive tolls of all persons crossing said bridge, and it has not been

done in all cases, but they deny that plaintiffs have been injured or prejudiced thereby, and they say that the defendants' bridge is now nearly completed so as to accommodate that portion of the public travel requiring its erection, and that it is the purpose and intention of said defendants to collect of all persons crossing their said bridge tolls, according to the exigencies and provisions of their said charter.

And the said defendants say that they have no knowledge and not sufficient information to enable them to form a belief, whether the plaintiffs have from time to time notified the defendants that they should hold them responsible for the erection of said bridge, or its consequences, nor what has been the character of their notices from time to time, though they understand a verbal notice
16 was at some time given not to erect the new bridge, or something of the kind, but they have been informed and believe that the plaintiffs, through their secretary, notified, formally and officially, in writing, one Hazard Lewis, the contractor who erected the defendants' bridge for them, that said plaintiffs would hold him, the said Hazard Lewis, personally responsible for the erection of said bridge and all the consequences thereof.

And the defendants demand for judgment that the plaintiffs' complaint be dismissed with the costs and disbursements to the defendants allowed by law.

DICKINSON & WRIGHT,
Defendants' Attorneys.

BROOME COUNTY, *ss:*

Erasmus D. Robinson, of said county, being sworn, says he is president of the Binghamton Bridge Company, and that he has heard the foregoing answer read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

E. D. ROBINSON.

Sworn this 20th day of June, 1856, before me.

B. N. LOOMIS,
Justice of the Peace.

Supreme court—Broome county.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Order for judgment.

This cause having been brought to trial before me at a special term held in Binghamton, in said county, in April, 1857, and after hearing the proofs and allegations of the parties, and after hearing Mr. Mygatt, of counsel for plaintiffs, and Messrs. Dickinson and Wright of counsel for defendants, it is ordered that plaintiffs' complaint be dismissed, and defendants recover the costs of this action, and the clerk of Broome county can enter judgment in this action accordingly.

Dated January 26, 1858.

H. GRAY,
Justice of the Supreme Court.

17 Supreme court—Broome county.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Judgment.

This cause having been duly brought to trial, and judgment ordering that plaintiffs' complaint be dismissed, and that defendants recover costs, and the costs having been adjusted by the clerk of said county, on due notice, at $77: now, therefore, on motion of Dickinson and Wright, defendants' attorneys, it is ordered that judgment be and the same is hereby entered in favor of defendants, the Binghamton Bridge Company, and against plaintiffs, the Chenango Bridge Company, dismissing the plaintiffs' complaint for seventy-seven dollars and one cent, costs and disbursements.

Dated March 22d, 1858.

WM. C. DOANE, *Clerk.*

Supreme court.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Case and bill of exceptions.

This action was tried at a special term of this court, held at the court-house, in Binghamton, before the Hon. Hiram Gray, one of the justices of this court, on the 21st day of April, 1857, when the evidence and proceedings were as hereinafter stated.

After the opening of the case by the plaintiffs' counsel, the defendants' counsel moved to dismiss the complaint, on the ground that the plaintiffs, as a corporation, could not maintain the action to recover or restrain damages occasioned by a competing bridge, and insisted that if any action could be maintained for such alleged injury, it must be brought in the name of individual stockholders.

The court overruled the objection and the defendants' counsel excepted.

18 The plaintiffs offered to read in evidence from a printed book entitled "Laws of the State of New York, passed at the twenty-eighth session of the legislature, begun and held at the city of Albany, the 6th day of November, 1804," at the bottom of the title-page of which was printed, "Albany, printed by John Barber, printer to the State, 1805," chapter eighty-ninth of said laws, which are in the words and figures following:

"CHAP. LXXXIX.

"*Newburg and Chenango Turnpike Company.*

"AN ACT to establish a turnpike corporation for improving and making a road from the village of Oxford, in the county of Chenango, to intersect the Newburg and Cochecton turnpike road, and for other purposes.

Passed April 6, 1805.

"1. *Be it enacted by the people of the State of New York represented in senate and assembly,* That Richard B. Church, Asa Stowell, Nathaniel Locke, David Cooper, Anson Carey and Elijah Stowell, and all such others as shall

associate for the purpose of making a good and sufficient road, running from the village of Oxford, in the county of Chenango, and to begin at or near the said village, and run by the most direct practicable route to the Susquehanna river, at the place designated by law for the Jericho toll bridge, and across the said bridge, and from the east end thereof to the road, at the house of Asa Stowell, leading to the court-house, and from thence to the west branch of Delaware river, at or near the house of Coenrad Edict, and from the opposite side of the said branch to the east branch of said river, and from the opposite side thereof, by the most direct practicable route, to intersect the Newburg and Cochecton turnpike road, their successors and assigns, be, and are hereby, created a body corporate and politic, by the name of 'The President and Directors of the Newburg and Chenango Turnpike Road Company;' and they are hereby ordained, constituted and declared to be a body corporate and politic, in fact and in name, and by that name they and their successors shall and may have continual succession, and shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever; and they
19 and their successors, by the same name and style, shall be in law capable of purchasing, holding and conveying any estate, real and personal, for the use of the said corporation: *Provided*, That such estate, as well real as personal, so to be purchased and held, shall be necessary to fulfil the end and intent of the said corporation, and to no other purposes whatsoever.

"II. *And be it further enacted*, That Richard B. Church, Nathaniel Locke and Peter Pine be and they are hereby appointed commissioners to do and perform the several duties hereinafter mentioned; that is to say, each of the said commissioners shall furnish himself with a book, in which shall be written, 'We, whose names are hereunto subscribed, respectively promise to pay to the president and directors of the Newburg and Chenango Turnpike Road Company the sum of twenty-five dollars for every share of stock thereof set opposite to our respective names, in such manner and proportion, and at such time and place, as the said president and directors shall from time to time require;' that such books shall be kept open for receiving subscriptions, and every subscriber shall, at the time of subscribing, pay one dollar for each share subscribed to the commissioner in whose book he shall so subscribe; that the stock of said company may consist of six thousand and five hundred shares; that as soon as four hundred shares shall have been subscribed the said commissioners shall cause an advertisement to be inserted in one of the public newspapers printed in the county of Chenango, or Owego in Tioga county, giving at least twenty days' notice of the time and place when and where the said subscribers shall meet to choose thirteen directors, who shall be stockholders, for the purpose of managing the concerns of the company until the first Monday in October next after such election; and the said directors shall be chosen by ballot by the stockholders then present, at which said first election such of the said commissioners as shall be then and there present shall preside; and the said first Monday in October shall forever thereafter be the anniversary day for choosing directors; and that at every subsequent election the stockholders present shall, by plurality of votes, elect three of their number to preside at such election, that the person so presiding shall receive the ballots at such election, and immediately after the election shall be closed openly estimate the votes, and thereon make and subscribe a certificate of the result of such election,
20 specifying the names of the stockholders so elected, and make return thereof to the said president and directors at their next meeting after such election; that every stockholder shall, either in person or by proxy, at every such election, be entitled to one vote for every share he shall hold to the

number of ten shares, and one additional vote for every ten shares he shall hold above the number of ten shares; that if such election shall not be held on any of the said annual election days, it shall be lawful to make such election at any other day to be appointed for that purpose by the said president and directors, in like manner and with like effect as if the same had been held at the usual time; and the directors in office shall in that case be incapacitated after the said anniversary election day from performing any act as directors other than such as may be necessary to give such election effect; that any seven of the said directors shall be a quorum, and capable of transacting the business of the said corporation, and any act of the majority of the directors so met shall be binding on the said corporation; and after such election the said directors shall, immediately after having met, proceed to elect by ballot one of their number for president, and the said president and directors may meet from time to time at such place as they may find expedient and direct, and they shall have the power to make such by-laws, rules, orders and regulations, not inconsistent with the constitution and laws of this State or of the United States, as they shall deem necessary for the well ordering of the affairs of the said corporation; that in case of vacancy by death, resignation, or otherwise, in the office of director, the other directors in office may, by a majority of votes, supply such vacancy until the next annual election day; that whenever the president shall be absent from any of the meetings of the directors, the directors present may, by plurality of votes, appoint another of their number president for the meeting, and they shall and may proceed and transact the business of the said corporation in like manner as if the president was present; and that at the first meeting of the first directors to be chosen as aforesaid by the stockholders, the said commissioners above named shall deliver their respective subscription books, and pay over the moneys received by them respectively on such subscriptions, to the president and directors of the said corporation; that the said president and directors may continue to receive subscriptions to
21 the stock of the said corporation, until there shall have been six thousand five hundred shares subscribed, and shall have power to appoint such officers, agents, clerks, artists, workmen and others under them as shall be necessary for executing the business of the said corporation.

"III. *And be it further enacted*, That it shall be and hereby is made the duty of three commissioners not interested in the turnpike, who shall be nominated and appointed by the person administering the government of this State, or any two of them, to lay out such road according to the best of their judgment and understanding, without favor or partiality, in such manner that the object of the corporation and the general interest of the public shall be in the best manner effected, and it shall be the duty of the said commissioners to deposit and cause to be filed in the office of the clerk of every county through which such road shall pass, an accurate return and map of the survey of the same in such county, designating the several particular points through which it shall pass, and each of which commissioners for their services aforesaid shall be allowed at the rate of three dollars a day for every day they shall be necessarily employed in the services aforesaid, to be paid, together with the expense of surveying and filing the said map, by the said corporation; and the president and directors may contract and agree with the owners of the said land for the purchase of so much thereof as shall be necessary for the purpose of making the said road, and for erecting and establishing gates, toll-houses, and all other works to the said road belonging; and in case of disagreement between the said parties with respect to the value of the land so as aforesaid to be laid out, and the damage, if any, to be done to the said land, or if the owner or owners shall be feme covert, insane, under age, or out of the county, then and in either such case it shall and may be lawful for the said president and directors to apply

to one of the judges of the court of common pleas in and for the county in which such land shall be situated, not interested in the said road, who is hereby authorized and required to nominate and, by an instrument signed by him, to appoint three appraisers, being freeholders of the said county, and who shall not be inhabitants of any of the towns through which the said road shall pass, or interested in the said road, or the land to be appraised; and it shall be the duty of the said president and directors to give notice to the said appraisers of their appointment, who, or any two of whom, shall there-
22 upon name a day for meeting on the land and performing the duties required of them by this act, which day shall not be more than ten nor less than four days from such notice of their appointment; and the said president and directors shall give at least four days' notice to the owner or owners of such land of the time when and place where the said appraisers shall meet for the purpose of viewing the land and assessing the damages, except in case the owner or owners shall labor under any of the disabilities aforesaid, or be absent, in either of which cases a copy of such notice may be left at the dwelling-house of any of the parties or other notorious place on the land through which such road shall pass; and further, each of the said appraisers shall, before he proceeds to execute the trust reposed in him by this act, take and subscribe an oath or affirmation in writing, before one of the justices of the peace of the said county for which he shall be so appointed, that he will, without favor or partiality, estimate and assess the damages which may be sustained by the owner or owners of the land or improvements which the said corporation may deem necessary to take and appropriate for said road; and the said appraisers shall then proceed to view the premises, and having ascertained and determined the damages, shall make an inquisition under their hands and seals, or of any two of them, describing the lands and stating the amount of damages, if any, which each or any of the owner or owners of any parcel of land used or to be used for such road have sustained or will sustain, which inquisition shall be acknowledged by the appraisers signing the same before one of the judges aforesaid, and then by them filed, together with the affidavit aforesaid, in the office of the clerk of the county in which such land shall be situated, within thirty days after such view shall be had and inquisition made by the said appraisers, and the said clerk shall, at the expense and costs of the said president, directors and company, enter the same of record in the book kept by him for recording deeds; and the president and directors aforesaid, upon paying the said several owners of the said land the several sums so assessed and awarded by the said appraisers in their said inquisition, shall and may have and hold, to them and their successors and assigns forever, the lands and tenements in the said inquisition described: *Provided*, That nothing in this act contained shall be construed to authorize the said president and directors to enter upon
23 such land for the purpose of making such road thereon until they shall have paid such damages as may be agreed upon or appraised according to the provisions of this act, if the same shall be lawfully demanded.

"IV. *And be it further enacted*, That the said president and directors shall pay to the judge who shall appoint the appraisers to assess the damages aforesaid one dollar and fifty cents for his services, and to each of the said appraisers for every day necessarily attending to perform the duties required by this act two dollars and fifty cents.

"V. *And be it further enacted*, That the said president, directors and company shall cause a road to be laid out not less than four rods wide, and which shall be twenty-eight feet between the ditches, whereof twenty-four feet shall be bedded with wood, stone, gravel, or some other hard substance well compacted together, a sufficient depth to secure a good and solid foundation to the same, and the said road shall be faced with gravel or stone pounded, or other

hard substance, in such manner as to secure, as near as the substance will admit of, an even and firm surface, rising toward the middle by a gradual arch; and they shall, during the continuance of this act, maintain and keep the said road in good repair, and when it may be practicable, the ditches shall be so constructed as to admit sleighs to go in them with safety.

"VI. *And be it further enacted*, That as soon as the president and directors shall have completed the said road or ten miles thereof, it shall be lawful for the said president and directors to give notice thereof to the person administering the government of this State for the time being, who shall thereupon forthwith nominate and appoint three discreet freeholders, and not interested in the said turnpike road, to view the same and to report to him, in writing, whether such part of the said road is completed in a workmanlike manner, according to the true intent and meaning of this act; and if the report shall be in the affirmative, then it shall be the duty of the person administering the government of this State, and he is hereby required by license under his hand and the privy seal of the State, to permit the said president and directors to make and erect so many gates and turnpikes across and upon the said road as will be necessary and sufficient to collect the duties and tolls hereinafter granted to the said corporation from all persons travelling or using the same.

24 "VII. *And be it further enacted*, That as soon as the whole or any part of the said road shall be completed, and permission so as aforesaid granted to erect a gate or gates and turnpikes upon and across the same, it shall and may be lawful for the said president and directors to appoint toll-gathers to collect and receive of and from all and every person or persons using the said road, at each and every of said gates, the tolls and duties hereinafter mentioned, and no more, that is to say: any number of miles not less than ten in length of the said road, the following sums of money, and so in proportion for any greater or less distance, or any greater or less number of sheep, hogs, cattle, horses or mules, as follows: For every score of sheep or hogs, eight cents; for every score of cattle, horses or mules, twenty cents; for every horse rode, six cents, and for every horse led or driven, four cents; for every chair, sulkey or chaise, with one horse, twelve and a half cents; for every cart drawn by one horse, six cents; for every chariot, coach, coachee or phæton, twenty-five cents; for every stage wagon or other four-wheel carriage drawn by two horses, mules or oxen, twelve and a half cents, and three cents for every additional horse, mule or ox; for every cart drawn by two oxen, twelve and an half cents, and three cents for every additional horse, mule or ox; for every sleigh or sled, eight cents, if drawn by two horses, mules or oxen, and in like proportion if drawn by a greater or less number of horses, mules or oxen; and it shall and may be lawful for any toll-gatherer to stop and detain any person riding, leading or driving any horse, mule, cattle, sheep or hogs, sulkey, chair, phæton, chaise, cart, wagon, sleigh or other carriage of burthen or pleasure, from passing through any of the said turnpike gates until they shall have respectively paid the toll as above specified: *Provided*, That nothing in this act shall be construed to entitle the said corporation to demand or receive toll at any gate of or from any person passing to or from public worship or a funeral, or to or from a grist-mill for the grinding of grain for his family's use, or to or from a blacksmith's shop to which he usually resorts, or from any person or persons going for or returning with a physician or midwife, or from any person or persons who are entitled to vote, in going to or returning from any town meeting or election for the purpose of giving a vote, or from any juror or witness going to or returning from court, having been legally summoned or

25 subpœnaed, or from any person residing within two miles of any of the said gates, or from any troops in the service of the State or the United States, or for any artillery wagons or other carriages belonging to this State or the United States, or from any person or persons going to or returning from

any training, where by laws of this State they are required to attend: *Provided, nevertheless,* That if any person shall claim to be exempted from paying toll by virtue of any of the before-mentioned exceptions, and shall be permitted to pass any one of the said toll-gates free of toll, and shall thereafter be found not legally entitled to such exemption, he or she shall for every such imposition forfeit and pay to the said corporation the sum of five dollars, to be recovered in an action of debt with costs of suit.

"VIII. *And be it further enacted,* That no more than one-half of the above toll shall be demanded or received for any wagon or other carriage passing upon the said road the tire or track of the wheel whereof is more than six inches wide, nor more than one-fourth of the above toll for those above nine inches wide, and that all carriages the tire or track of the wheel whereof is twelve inches wide shall pass said road free without paying any toll whatsoever; and that the president and directors shall cause to be affixed and kept up at or over each gate, in some conspicuous place where it may be conveniently read, a painted or printed list of the rates of toll which may be lawfully demanded.

"IX. *And be it further enacted,* That the said corporation shall cause mile-stones or posts to be erected and maintained, one for each mile of the said road, and on each stone or post shall be fairly and legibly inscribed or marked the distance the said stone or post is from Hudson's river; and if any person shall break or throw down, or cut down, deface or injure any of the said mile-stones or posts so to be erected, or shall wilfully break or throw down any of the said gates or turnpikes, or shall dig up or spoil any part of said road or anything thereunto belonging, or shall forcibly pass either of the said gates, without having previously paid the legal toll, such person or persons shall, for every such offence or injury, forfeit and pay the sum of twenty-five dollars, to be recovered by the said corporation, to their use, in an action of debt, with costs of suit, in any court having cognizance thereof; and if any person, or persons shall, with his team, carriage, horse, or other creatures, before mentioned, turn out of said road to pass either of the said gates on ground adjacent
26 thereto, and again enter on said road, having passed the said gate or gates to avoid the payment of the toll due by this act, such person or persons shall forfeit and pay a fine not exceeding five dollars, to be recovered in like manner by the said corporation to their own use, with costs of suit, in any court having cognizance thereof.

"X. *And be it further enacted,* That if any toll-gatherer shall unreasonably delay or hinder any traveller or passenger at either of the said gates, or shall demand and receive more toll than is by this act established, he shall, for every such offence, forfeit and pay five dollars, to be recovered by the person so unreasonably detained for his own use, with costs of suit, in any court having cognizance thereof.

"XI. *And be it further enacted,* That the shares of the said turnpike road shall be deemed and considered to be personal estate, and be transferable in such manner as the said president and directors may direct.

"XII. *And be it further enacted,* That it shall and may be lawful for the said president and directors, at any time after the completion of said road, to lessen the rates of toll or duties, or to take away or open or cause to be kept open one or more of the gates and turnpikes.

"XIII. *And be it further enacted,* That the president and directors of the said corporation shall keep a fair and just account of all moneys received or to be received by the several collectors of toll on said road, and shall make and declare a dividend of the clear profits and income (all contingent costs and charges being first deducted) among the stockholders of the said corporation on the fourth Mondays of March and September in every year, and shall publish the

same among the stockholders, and the time and place when and where the same will be paid, and shall cause the same to be paid accordingly.

"XIV. *And be it further enacted,* That the president and directors shall, within six months after the said road shall be completed, lodge in the office of the comptroller of this State an account of the expenses thereof, and the corporation shall annually exhibit to the comptroller a true account of the dividends arising from said toll, with the annual disbursements.

"XV. *And be it further enacted,* That it shall and may be lawful for the president and directors to demand from the stockholders, respectively, all such sums of money by them subscribed, or to be subscribed, at such time and in such proportions as they shall see fit, under the pain of forfeiture of
27 their shares and all the previous payments thereon, to the said president and directors; and that after the full amount of the six thousand and five hundred shares shall have been appropriated and expended by the said president and directors, for the purpose of making a good and sufficient road between places aforesaid, and the sum so appropriated shall be found insufficient to effect the purposes aforesaid, it shall and may be lawful for the said president and directors, in order to complete the said road and turnpike, to increase or raise the funds of the said corporation by adding a sum not exceeding five dollars to each and every share in the whole stock, which sum, so to be added, shall be in an equal ratio upon each and every share, to be collected and paid in manner aforesaid, subject, on default of payment, to the pains and forfeitures aforesaid.

"XVI. *And be it further enacted,* That the legislature may dissolve the said corporation when the income arising from the said toll shall have paid and compensated the said corporation for all moneys they may have expended in purchasing and making said road, together with an interest thereon of ten per centum per annum, besides the expense of repairing and taking care of said road and ditches, and thereupon the right, interest and property of the said corporation shall be vested in the people of this State, and be and remain at their disposal: *Provided,* That if the said corporation shall not commence their operations within two years, and shall not within ten years thereafter complete the same, according to the intent and meaning of this act, then, and in either case, this act shall cease and be void and of no effect.

"XVII. *And be it further enacted,* That the whole extent of the road hereby incorporated shall, for the purpose of being inspected, be divided by the said president and directors into two equal districts, and be distinguished by the first and second inspection districts of the Newburg and Chenango Turnpike road; to each of which districts shall be appointed, by the person administering the government of this State, and subject to removal by him at discretion, a discreet freeholder as commissioner, who shall be in no way interested in the said corporation, whose duty it shall be, on accepting the said appointment, from time to time, and especially upon complaint made to him in writing, subscribed by the complainant, of the insufficiency of the said road in any part thereof within his district, and whenever he shall find the same out of repair or obstructed by snow to give notice thereof in writing to the
28 keeper of the nearest toll-gate on such road, or to the president or any of the directors of said corporation; and it is hereby made the duty of the said president and directors, immediately upon such notice, to cause such road to be well and sufficiently repaired and amended, or opened, as the case may require, under the penalty of ten dollars for every neglect of forty-eight hours in opening or repairing such road as aforesaid, to be sued for by such commissioners, and recovered, with costs of suit, in an action of debt, in any court having cognizance thereof, which penalty when recovered shall without delay be paid over to the overseers of the poor of the town in which such forfeiture

shall have been incurred for the use of the poor of said town; and the said commissioner is hereby further empowered, whenever in his opinion it shall become just and necessary on account of the insufficiency of the said road within his district, by writing, to be delivered to the keeper of any toll-gate, to order all or any of the toll-gates across the same to be opened and kept open until the said road shall have been, in his opinion, well and sufficiently repaired, which the said keeper shall be and is hereby required to obey, under the like penalty, to be sued for, recovered and applied as aforesaid; and it is hereby made the duty of such commissioner, upon notice in writing received from the president or any of the directors of the said corporation, to examine and determine whether such road shall have been sufficiently repaired and amended or opened, and to direct accordingly; but from every such decision of a commissioner there shall be a right of appeal by the said president and directors to the commissioner of the other inspection district of said road, whose decision thereon shall be final; that every of the said commissioners shall be entitled to and receive, as a compensation for his services aforesaid, at the rate of two dollars and fifty cents for every day he shall be necessarily engaged therein; but no one commissioner shall, for viewing and inspecting within his own district, except on the application of the president or any of the directors, be entitled to a compensation exceeding two days wages in any one month of the year; that the compensation hereby authorized to any such commissioner shall be paid to him quarter-yearly, if required, out of the funds of the corporation, and that such accounts for services shall, if required, be attested to by such commissioner before the same shall be payable: *Provided, however,* That every such
29 commissioner, before he enter on the duties above assigned, shall first take and subscribe an oath or affirmation before any judge or justice of the peace of the county in which he shall reside, faithfully and impartially, to the best of his judgment, to execute the trust reposed in him by this act, and cause to be delivered to the president, or any of the directors of the said corporation, a certificate of such judge or justice of his having taken the said oath or made the said affirmation.

"XVIII. *And be it further enacted,* That for the purpose of laying out and opening a communication by a good and sufficient turnpike road from Chenango Point, in the county of Tioga, to intersect the road hereby established at or near the Cook House, and to open a communication as well from Oxford as Chenango, to Kingston on Hudson's river, as to Newburgh aforesaid, all such persons as shall associate for the purpose of opening and making a good and sufficient turnpike road from the most convenient point or place on Chenango river, at or near Chenango Point, in the county of Tioga, to intersect the before-mentioned road at or near the Cook House, and from the most convenient point or place on said road, east of the east branch of Delaware river, to run along or near the house of Ebenezer Reed, in the town of Neversink, and of Eliza Hoornbeek, in the town of Rochester, to terminate at the most convenient point or place on the public highway, which leads from the town of Rochester aforesaid to Kingston landing, with full power to lay out and make a branch road from the said road to the Delaware river, and to erect toll-gates and toll-houses on such roads, for the purpose of collecting the same rate of toll according to the length thereof as is established in the before-mentioned road; and for that purpose, under the like limitations and restrictions, to erect and maintain thereon toll-gates and toll-houses, they and their successors and assigns, shall be and hereby are created a body corporate and politic in fact and in name, and by the name of 'The Neversink Turnpike Road Company,' they and their successors shall and may have continual succession, and shall be capable in law of suing and being sued, pleading and being impleaded, defending and being defended, in all courts and places whatsoever, and they and their succes-

sors shall be in law capable of purchasing, holding and conveying any estate, real and personal, for the use of the said corporation: *Provided*, That such estate, as well real as personal, so to be purchased and held, shall be necessary to fulfil the end and intent of the said corporation, and to no other purpose whatsoever.

"XIX. *And be it further enacted*, That Moses Cantine, jr., Samuel Preston, Daniel Brodhead, jr., and Benjamin Hardenburgh, are hereby appointed commissioners, each of whom shall furnish himself with a book, in which shall be written: 'We, whose names are hereunto subscribed, respectively promise to pay to the president and directors of the Neversink Turnpike Company the sum of twenty-five dollars for every share of the stock thereof set opposite our respective names, in such manner and proportion, and at such time and place, as the said president and directors shall from time to time require;' which said commissioners shall further do and perform, all and singular the duties mentioned and detailed in the second section of this act, and every part of the section aforesaid, and all and singular the powers, duties, provisions and regulations therein contained, shall be and hereby are fully extended to the said commissioners; and the president and directors of this incorporation shall be and hereby are declared to be subject to the like restraints, penalties and regulations, be entitled to exact, demand and receive the same rate of toll, and exact the like penalties, exercise the like powers, rights, privileges and immunities, and their toll-gatherers shall also be subject to the like duties and penalties in every respect, as are contained in the foregoing incorporation of the Newburgh and Chenango Road Company, and that all and singular the provisions, parts and clauses of the said incorporation, not inconsistent with the particular provisions herein contained, shall be and the same are hereby fully extended to the president and directors of this incorporation.

"XX. *And be it further enacted*, That the said president and directors shall at all times during the continuance of this incorporation, maintain and support good and sufficient bridges, of at least twenty feet wide, over the several streams of water where the turnpike road hereby to be laid out shall intersect; shall pass free of all expense all toll, except across the Neversink river, and for erecting and maintaining a good and sufficient toll-bridge, across which the said president and directors shall be entitled to exact, demand and receive from persons crossing the same with their creatures and carriages half the toll herein and hereby established for every ten miles travel on said road: *Provided, nevertheless*, That the whole width and bed of the streams of the Susquehanna and Chenango rivers shall not be deemed or construed to be a part of the turnpike road hereby established, and that nothing herein contained shall be construed to authorize the said company to obstruct the public highway before mentioned leading from the town of Rochester to Kingston landing, with any toll-gate.

"XXI. *And be it further enacted*, That the stock of the said company shall and may consist of six thousand five hundred shares of twenty-five dollars each.

"XXII. *And be it further enacted*, That the public notice to be given by the commissioners for receiving subscriptions for this incorporation shall be published in one of the newspapers printed in the town of Kingston.

"Whereas the foregoing road incorporation cannot be sufficiently carried into effect, or the public convenience fully promoted, if durable and permanent bridges across the Susquehanna and Chenango rivers and the east and west branches of Delaware river, at the several places of intersection of the said roads, are not at the same time erected and maintained; and whereas by reason of the great expense necessarily to be incurred in erecting and maintaining such bridges, on account of the size and rapidity of those streams and the

extraordinary freshets and frequent obstructions happening in those rivers, to which such bridges will be exposed, and which will endanger their permanency and durability, and may call forth a frequent renewal of the whole capital required for rebuilding such bridges, and therefore require a power (not contained in the foregoing incorporations) of calling from the stockholders from time to time such sums as shall be required for upholding such bridges, and which equally forbid the policy incorporated in the foregoing incorporations, that said property shall revert to the State; and whereas it is suggested that it will be most expedient for the purposes aforesaid to make two separate and distinct bridge incorporations, with powers adequate to the accomplishment thereof in the best possible manner: Therefore—

"XXIII. *Be it further enacted*, That Richard B. Church, Asa Stowel, Nathaniel Locke, David Cooper, Anson Carey, and Elijah Stowel, and all such others as shall associate for the purpose of erecting a bridge over and across the west branch of the Delaware river, where the turnpike road to be laid out by virtue of this act shall cross the same; and also for the purpose of erecting a toll-bridge over and across the east branch of Delaware river, where the turnpike road aforesaid shall cross the same, their successors and assigns,
32 shall be and are hereby created a body corporate and politic, by the name of 'The President and Directors of the Delaware Bridge Company;' and they are hereby ordained, constituted and declared to be a body corporate and politic, in fact and in name, and by that name they and their successors shall and may have continual succession, and shall be capable in law of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places whatsoever, in all manner of actions, suits, complaints, matters and causes whatsoever; and they and their successors by the same name and style shall be in law capable of purchasing, holding and conveying any estate, real and personal, for the use of the said corporation: *Provided*, That such estate, as well real as personal, so to be purchased and held, shall be necessary to fulfill the end and intent of the said corporation, and to no other purpose whatsoever.

"XXIV. *And be it further enacted*, That the said Richard B. Church and Peter Pine be and they are hereby appointed commissioners to do and perform the several duties hereinafter mentioned, that is to say: they shall respectively, on or before the fifteenth day of June next, furnish themselves with a book, in which shall be written: 'We, whose names are hereunto subscribed, do, for ourselves and our legal representatives, severally promise to pay the president and directors of the Delaware Bridge Company the sum of fifty dollars for every share of the stock set opposite our respective names, in such manner and proportion, and at such time and place, as shall be determined by the said president and directors;' who shall respectively open the same at their respective dwelling-houses, on the said fifteenth day of June, at ten of the clock in the forenoon, and keep the same open from day to day, except Sundays, between the hours of ten in the forenoon and three in the afternoon, for the purpose of receiving subscriptions, until the whole number of four hundred shares are subscribed for; that every subscriber shall, at the time of subscribing, pay unto the said commissioner, in whose book they shall so subscribe, the sum of three dollars for each share so by him subscribed; and that each share of the said stock shall consist of fifty dollars; that as soon as the whole number of shares shall have been subscribed for, the said commissioners shall cause an advertisement to be
inserted in one of the public newspapers printed in the county of Che-
33 nango, or Owego, in Tioga county, and one or more to be posted up at some public place in said town of Jericho, giving at least twenty days previous notice of the time and place when and where the said subscribers shall meet to choose five directors, who shall be stockholders, for the purpose of man-

aging the concerns of the company until the first Monday of November next after such election; and the said directors shall be chosen by ballot, by the stockholders then present, at which said first election the said commissioners shall preside; and the said first Monday of November shall, forever thereafter, be the anniversary day for choosing directors, and that at every subsequent election the stockholders present shall, by plurality of votes, elect three of their number to preside at such election; that the persons so presiding shall receive the ballots at such election, and immediately after the election shall be closed shall openly estimate the votes, and thereupon make and subscribe a certificate of the result of such election, specifying the names of the stockholders so elected, and make return thereof immediately to the president and directors in office, whose duty it shall be to be convened on the said election day, and to give immediate notice to the persons so chosen directors of their being chosen, and to appoint the earliest and most convenient time and place for the first meeting of the said new directors, to whom they shall deliver or cause to be delivered over, all the records, books, accounts, and property of the said company; that at every such election for directors every stockholder shall, either in person or by proxy, be entitled to one vote for every share he shall hold in the stock of the said company; that if such election shall not be held on any day of the said annual election days, it shall be lawful to make such election at any other day to be appointed for that purpose by the said president and directors, in like manner and with like effect as if the same had been held at the usual time; and the directors in office shall in that case be incapacitated after the said anniversary election day from performing any act as directors other than such as may be necessary to give such election effect; that any three of the said directors shall be a quorum, and capable of transacting the business of the said corporation, and any act of the majority of the directors so met, shall be binding on the said corporation; and after every such election the said directors elected shall, immediately after having met, proceed to elect by ballot one of their number for president; and the said president and directors may
34 meet, from time to time, at such place as they may find expedient and direct; and they shall have the power to make such by-laws, rules, orders and regulations, not inconsistent with the constitution and laws of this State or of the United States, as they shall deem necessary for the well ordering of the affairs of the said corporation; that in case of vacancy by death, resignation, or otherwise, in the office of director, the other directors in office may, by a majority of votes, supply such vacancy until the next annual election day; that whenever the president shall be absent from any of the meetings of the directors, the directors present may, by plurality of votes, appoint another of their number president for the meeting, and they shall and may proceed and transact the business of the said corporation in like manner as if the president was present; and that at the first meeting of the first directors, to be chosen as aforesaid by the stockholders, the said commissioner above named shall deliver such subscription book, and pay over all moneys received by him on such subscriptions, to the said president and directors; that the president and directors of the said company shall at all times have power to appoint such officers, agents, clerks, artists, workmen and others under them as shall be necessary for executing the business of the said corporation.

"XXV. *And be it further enacted.* That the said bridges shall be built of good, strong and sufficient materials, not less than twenty feet wide, and shall be well secured with good and sufficient railing on each side thereof, and not less than four feet high; that in case the said bridges shall not be erected, built, and completed on or before the first day of December, in the year of our Lord one thousand eight hundred and nine, then in such case this corporation shall be adjudged and considered as dissolved.

"XXVI. *And be it further enacted*, That as soon as the said bridge shall be completed, and the judges of the court of common pleas of the county of Delaware, or a majority of them, shall, upon inspection, certify under their hands that the said bridge is well and sufficiently constructed and built, and will admit of the passage of loaded teams and other carriages, it shall and may be lawful for the said president and directors to erect a gate at either end of the said bridges and demand, receive and take, for the use of the said corporation, a toll not exceeding the following rates, to wit: Every four-wheel pleasure carriage drawn by two horses, twenty-five cents, if drawn by four
35 horses, thirty-one cents; every two-wheel pleasure carriage drawn by one horse, twelve and a half cents, and if drawn by two horses, fifteen cents; every wagon and two horses, nineteen cents, and if drawn by four, twenty-five cents; each sled and horses, nineteen cents; each ox wagon or cart and two oxen, nineteen cents; each additional yoke of oxen thereto, six cents; every one horse cart, twelve and a half cents; every one horse sled, ten cents; every ox sled drawn by one yoke of oxen, nineteen cents, and every additional yoke, six cents; every man and horse, six cents; every foot passenger, three cents; every horse, jack or mule, four cents; every cow or other neat cattle, two cents; every sheep, hog or calf, one cent; and the said corporation shall cause to be affixed to each toll-gate a list of the rates of toll which may be hereby lawfully demanded, and it shall and may be lawful for the president and directors at any time after the completion of the said bridges to lessen the rates of toll hereby established, provided the stockholders holding three-fourths of the stock of the said corporation shall assent thereto.

"XXVII. *And be it further enacted*, That if either of the said bridges after the same shall be completed shall be impassable for the term of thirty days for want of repairs, unless carried away by the ice or freshet, or other unavoidable accident, or unless thrown down for the purpose of rebuilding the same, and if the same shall not be rebuilt in two years, that the said corporation shall be deemed to be forfeited thereby.

"XXVIII. *And be it further enacted*, That it shall and may be lawful for the said directors to call and demand from the stockholders, respectively, all such sums of money by them subscribed, or to be subscribed, at such time and in such proportion as they shall see fit, under pain of forfeiture of their shares and of all the previous payments thereon to the said president and directors.

"XXIX. *And be it further enacted*, That if any person or persons shall wilfully do or cause to be done any act whatsoever, whereby either of the said bridges or any toll-gate, toll-house, or anything appertaining to the bridges or toll-gate shall be impaired, weakened or injured, the person or persons so offending shall forfeit and pay to the said company the sum of ten dollars, to be recovered in action of debt, with costs of suit, and shall moreover be liable to treble the amount of the damages sustained by said company, with costs of suit, to be recovered in an action of trespass, in any court having cog-
36 nizance thereof, which action shall be considered in every instance transitory in their nature, and shall and may be brought and triable in any county of the State.

"XXX. *And be it further enacted*, That the said president and directors, when they have completed and finished either of the said bridges, shall at all times thereafter, as well by night as by day, provide and keep a sufficient person or persons to attend to the toll-gate on said bridges, for the purpose of permitting all persons applying with their property to pass over the same, on receiving the toll hereby authorized to be exacted.

"XXXI. *And be it further enacted*, That it shall not be lawful for any person or persons to erect any bridge or establish any ferry across the said west and east branches of Delaware river within two miles either above or below the

bridges to be erected and maintained in pursuance of this act, except between the times the said bridges or either of them shall not be passable, or forcibly to pass the said bridges or either of them without having previously paid to the toll-gatherer, for the use of the said corporation, the toll hereby established for crossing the said bridges; but that every such person or persons shall, for every such last offence or injury, forfeit and pay for the use of the said corporation the sum o ten dollars, to be recovered by the said corporation to their use in an action of debt, with costs of suit, in any court having cognizance thereof: *Provided, nevertheless,* That nothing herein contained shall be construed to prevent any person residing within two miles of the said bridges from crossing the said river to or from his or her house or land with his or her own boat or craft, without being subject to the payment of any toll.

"XXXII. *And be it further enacted,* That whenever, after the full amount of the said stock shall have been appropriated and expended by the said president and directors for the purpose or making and maintaining the bridges aforesaid, according to the true intent and meaning of this act, and the said stock shall be found insufficient to effect the purposes of erecting and maintaining the said bridges, or either of them, during the continuance of this incorporation, it shall and may be lawful for the president and directors at any time to increase or raise the funds of the said corporation by adding such sum or sums as may be necessary, from time to time, to each and every share in the whole stock of the said company, as the exigency shall, in their opinion, demand and require; which sum or sums, so to be added to each share, shall be in an equal
37 ratio upon each and every share, to be collected and paid in the same manner as the said original amount is made payable, subject on default of payment to the same pains and forfeitures aforesaid.

"XXXIII. *And be it further enacted,* That the shares in the said company shall be taken, deemed and considered to be personal estate, and shall and may be transferable, which transfers shall be made and inserted in the said books of the said president and directors.

"XXXIV. *And be it further enacted,* That the said president and directors shall from the commencement of their organization keep a regular and fair account of all business, transactions and expenditures done or authorized by them, as also an account of all moneys received for toll for crossing the said bridges, which shall at all reasonable times be open to the inspection of any stockholder; and they shall make and declare a dividend of the clear profits and income (all contingent costs and charges being first deducted) amongst the stockholders of the said corporation, and shall, on the first Tuesday of March and September in every year, publish the half yearly dividend to be made of the clear profits among the stockholders, and of the time and place when and where the same will be paid, and shall cause the same to be paid accordingly.

"XXXV. *And be it further enacted,* That if any toll-gatherer shall unreasonably delay or hinder any traveller or passenger at either of the gates, or shall demand or receive more toll than is by this act established for crossing the said bridges, he shall, for every such offence, forfeit and pay the sum of five dollars, to be prosecuted for and recovered before any justice of the peace in the county where such offence shall be committed, for the sole use of the person so unreasonably delayed, hindered or defrauded.

"XXXVI. *And be it further enacted,* That from and after the expiration of the full term of thirty years from the passing of this act, the said bridge, with its appurtenances, shall become the property of the people of this State.

"XXXVII. *And be it further enacted,* That if any toll-gatherer shall be convicted of either of the offences mentioned in this act, and it shall appear by the return of any execution to be issued against him, on such conviction, that

the moneys or any part thereof cannot be had from the defendant, the corporation shall be held liable for the deficiency, and they shall not, until the
38 payment thereof, receive any toll at such gate at which the offence was committed.

"XXXVIII. *And be it further enacted*, That for the purpose of erecting and maintaining a good and sufficient toll-bridge over and across the Susquehanna river, at or near Ouquago, in the county of Tioga, and also for the erecting and maintaining a good and sufficient toll-bridge over and across Chenango river, at or near Chenango Point, in the county aforesaid, all such persons as shall associate for that purpose, their successors and assigns, shall be and hereby are created a body politic and corporate, and by the name of 'The Susquehanna Bridge Company' they, their successors and assigns, shall and may have perpetual succession, and shall be and hereby are invested with all and singular the powers, rights, privileges, immunities and advantages, and shall be subject to all the duties, regulations, restraints and penalties which are contained in the foregoing incorporation of the Delaware Bridge Company, and all and singular the provisions, sections and clauses thereof, not inconsistent with the particular provisions herein contained, shall be and hereby are fully extended to the president and directors of this incorporation; and the commissioners by this act appointed for opening books to receive subscriptions to the Neversink Turnpike Road Company shall in like manner, and at the same time, open books to receive subscriptions for the stock of this incorporation, and shall keep the same open until four hundred shares, of fifty dollars each, shall have been subscribed for; and the toll which the president and directors of this incorporation shall be entitled to demand and receive from persons for themselves, their carriages and creatures, for crossing the bridge across Chenango river aforesaid, shall in no instance exceed the toll for crossing the bridge of the Delaware Bridge Company at the Cook House; and they shall be entitled to receive one-third additional toll for passing the said bridge, which is hereby authorized to be received for crossing the bridge to be erected across the Susquehanna river.

"XXXIX. *And be it further enacted*, That all such persons as shall associate for the purpose of making a good and sufficient road from Kingston, in the county of Ulster, or from the most convenient point on the Ulster and Delaware turnpike road, in the town of Hurly, in said county, by the most direct
39 practicable route, to the west bank of the west branch of the Delaware river, in the town of Walton, their successors or assigns, be, and hereby are, created a body politic and corporate, in fact and in name, and by the name of 'The Popacton Turnpike Road and Bridge Company,' they and their successors and assigns, shall and may have continual succession, and shall be capable in law of suing and being sued, pleading and being impleaded, defending and being defended, in all courts and places whatsoever, and in all manner of actions, suits, complaints, matters, and causes whatsoever, and they and their successors shall be, in law, capable of purchasing, holding, and conveying any estate, real and personal, for the use of the said corporation: *Provided*, That such estate, as well real as personal, so to be purchased and held, shall be necessary to fulfil the end and intent of the said corporation, and to no other purpose whatsoever.

"XL. *And be it further enacted*, That Gabriel North, Adam I. Doll, William Swart, William Denning, and Peter Marius Groen, be, and they are hereby, appointed commissioners to do and perform the several duties hereinafter mentioned, that is to say, each of the said commissioners shall furnish himself with a book, in which shall be written: 'We, whose names are hereunto subscribed, respectively promise to pay to the president and directors of the Popacton Turnpike Road and Bridge Company, the sum of twenty-five dollars for every share of the stock thereof set opposite our respective names, in such manner and pro-

portion, and at such time and place, as the said president and directors shall from time to time require;' that such book shall be kept open for receiving subscriptions, and every subscriber shall, at the time of subscribing, pay one dollar for each share subscribed, to the commissioner in whose book he shall so subscribe; that the stock of the said company may consist of eight thousand four hundred shares; and that as soon as five hundred shares shall have been subscribed, the said commissioners shall cause an advertisement to be inserted in one of the public newspapers printed in Kingston, Ulster county, giving at least twenty days' notice of the time and place, when and where the said subscribers shall meet to choose eleven directors, who shall be stockholders for the purpose of managing the concerns of the company until the first Monday in October next after such election, and the said directors shall be chosen by ballot, by the stockholders then present, at which said first election such of the commissioners as shall be then and there present shall preside, and the said first Monday of October shall forever thereafter be the anniversary day for choosing directors, and that at every subsequent election the stockholders present shall, by plurality of votes, elect three of their number to preside at such election; that the person so presiding shall receive the ballots at such election, and, immediately after the election shall be closed, openly estimate the votes, and thereupon make and subscribe a certificate of the result of such election, specifying the names of the stockholders so elected, and make return thereof to the said president and directors, at their next meeting after such election; that every stockholder shall, either in person or by proxy, at every such election, be entitled to one vote for every share he shall hold to the number of ten shares, and one additional vote for every ten shares he or she shall hold above the number of ten shares; that if such election shall not be held on any of the said annual election days, it shall be lawful to make such election at any other day, to be appointed for that purpose by the said president and directors, in like manner, and with like effect, as if the same had been held at the usual time, and the directors in office shall in that case be incapacitated after the said anniversary election day from performing any act as directors, other than such as may be necessary to give such election effect; that any six of the said directors shall be a quorum, and capable of transacting the business of the said corporation, and any act of the majority of the directors so met shall be binding on the said corporation; and after every such election the said directors elected shall, immediately after having met, proceed to elect by ballot one of their number for president; and the said president and directors may meet from time to time, at such place as they may find expedient and direct, and they shall have the power to make such bye-laws, rules, orders, and regulations, not inconsistent with the constitution and laws of this State or of the United States, as they shall deem necessary for the well ordering of the affairs of the said corporation; that in case of vacancy by death, resignation, or otherwise in the office of director, the other directors in office may, by a majority of votes, supply such vacancy until the next annual election day; that whenever the president shall be absent from any of the meetings of the directors, the directors present may, by plurality of votes, appoint another of their number president for the meeting, and they shall and may proceed and transact the business of the said corporation, in like manner as if the president was present, and that at the first meeting of the first directors to be chosen as aforesaid by the stockholders, the said commissioners above named shall deliver their respective subscription books, and pay over the moneys received by them respectively on such subscriptions, to the president and directors of the said corporation; that the said president and directors may continue to receive subscriptions to the stock of the said corporation, until there shall have been eight thousand four hundred shares subscribed, and shall have power to appoint such officers, agents, clerks, artists, workmen, and

others under them, as shall be necessary for executing the business of the said corporation.

"XLI. *And be it further enacted*, That the president and directors of this incorporation shall be, and hereby are, declared to be subject to the like duties, restraints, and regulations, and be entitled to receive the like tolls, and exact the like penalties, exercise the like powers, rights, privileges, and immunities, and their toll-gatherers shall be subjected to the like penalties in every respect as are contained in the foregoing incorporation of the Newburgh and Chenango Turnpike Road Company, and that, all and singular, the provisions, parts, and clauses of the said incorporation, and every part thereof, not inconsistent with the particular provisions herein contained, shall be, and hereby are, fully extended to the president and directors of this incorporation.

"XLII. *And be it further enacted*, That for erecting a good and sufficient toll-bridge across the Esopus creek, on the road hereby established, the said president and directors shall be, and hereby are, authorized to demand and receive half toll, established for every ten miles' travel on the said road; and for erecting good and sufficient toll-bridges across the east and west branches of Delaware river, or at the termination of the road hereby established, the said president and directors shall be, and hereby are, entitled to demand and receive from all persons, for crossing each of the said bridges, with their chattels and effects, the full toll for every ten miles' travel on the said road hereby established; and that the said president and directors shall, at all times, during the continuance of this incorporation, maintain and support good and sufficient bridges, of at least twenty feet wide, over and across every other stream which shall be intersected by the road hereby established, free of expense.

42 "XLIII. *And be it further enacted*, That this act shall be, and the same is hereby, declared a public act."

The defendants' counsel objected to the reading of the same, as not sufficiently proved, and as not properly authenticated. The plaintiffs' counsel stated that he should prove that John Barber was printer to the State when said law was passed, and when said session law purported to be printed. The objection was overruled and said chapter eighty-nine was read in evidence, and was as aforesaid.

The plaintiff's counsel then offered to read in evidence from a printed book, entitled "Private Laws of the State of New York, passed at the thirty-first session of the legislature, begun and held at the city of Albany, the twenty-sixth day of January, 1808," at the bottom of the title page of which was printed, "Albany, printed by John Barber, printer to the State, 1808." Chapter CXIX of said law, which are in the words and figures following:

"CHAP. CXIX.

"AN ACT to amend the Nevisink Turnpike Road and Susquehanna Bridge Companies, incorporated by an act entitled 'An act to establish a corporation for improving and making a road from the village of Oxford, in the county of Chenango, to intersect the Newburgh and Cochecton turnpike road, and for other purposes.'

"Passed April 1st, 1808.

"Whereas, upon the petition of the president and directors, in behalf of all the stockholders, of the Nevisink Turnpike Road Company, it is deemed expedient to make certain amendments in those charters:

"*Be it therefore enacted by the people of the State of New York, represented in senate and assembly*, That it shall and may be lawful for the president and directors of the Nevisink Turnpike Road Company, by and with the consent of the majority of the stockholders of the said company, to cause to be laid out, made, and finished, as part of their turnpike road under their present charter

portion, and at such time and place, as the said president and directors shall from time to time require;' that such book shall be kept open for receiving subscriptions, and every subscriber shall, at the time of subscribing, pay one dollar for each share subscribed, to the commissioner in whose book he shall so subscribe; that the stock of the said company may consist of eight thousand four hundred shares; and that as soon as five hundred shares shall have been subscribed, the said commissioners shall cause an advertisement to be inserted in one of the public newspapers printed in Kingston, Ulster county, giving at least twenty days' notice of the time and place, when and where the said subscribers shall meet to choose eleven directors, who shall be stockholders for the purpose of managing the concerns of the company until the first Monday in October next after such election, and the said directors shall be chosen by ballot, by the stockholders then present, at which said first election such of the com-
40 missioners as shall be then and there present shall preside, and the said first Monday of October shall forever thereafter be the anniversary day for choosing directors, and that at every subsequent election the stockholders present shall, by plurality of votes, elect three of their number to preside at such election; that the person so presiding shall receive the ballots at such election, and, immediately after the election shall be closed, openly estimate the votes, and thereupon make and subscribe a certificate of the result of such election, specifying the names of the stockholders so elected, and make return thereof to the said president and directors, at their next meeting after such election; that every stockholder shall, either in person or by proxy, at every such election, be entitled to one vote for every share he shall hold to the number of ten shares, and one additional vote for every ten shares he or she shall hold above the number of ten shares; that if such election shall not be held on any of the said annual election days, it shall be lawful to make such election at any other day, to be appointed for that purpose by the said president and directors, in like manner, and with like effect, as if the same had been held at the usual time, and the directors in office shall in that case be incapacitated after the said anniversary election day from performing any act as directors, other than such as may be necessary to give such election effect; that any six of the said directors shall be a quorum, and capable of transacting the business of the said corporation, and any act of the majority of the directors so met shall be binding on the said corporation; and after every such election the said directors elected shall, immediately after having met, proceed to elect by ballot one of their number for president; and the said president and directors may meet from time to time, at such place as they may find expedient and direct, and they shall have the power to make such bye-laws, rules, orders, and regulations, not inconsistent with the constitution and laws of this State or of the United States, as they shall deem necessary for the well ordering of the affairs of the said corporation; that in case of vacancy by death, resignation, or otherwise in the office of director, the other directors in office may, by a majority of votes, supply such vacancy until the next annual election day; that whenever the president shall be absent from any of the meetings of the directors, the directors present may, by plurality of votes, appoint another of their number president for the meeting, and they shall
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others under them, as shall be necessary for executing the business of the said corporation.

"XLI. *And be it further enacted,* That the president and directors of this incorporation shall be, and hereby are, declared to be subject to the like duties, restraints, and regulations, and be entitled to receive the like tolls, and exact the like penalties, exercise the like powers, rights, privileges, and immunities, and their toll-gatherers shall be subjected to the like penalties in every respect as are contained in the foregoing incorporation of the Newburgh and Chenango Turnpike Road Company, and that, all and singular, the provisions, parts, and clauses of the said incorporation, and every part thereof, not inconsistent with the particular provisions herein contained, shall be, and hereby are, fully extended to the president and directors of this incorporation.

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others under them, as shall be necessary for executing the business of the said corporation.

"XLI. *And be it further enacted*, That the president and directors of this incorporation shall be, and hereby are, declared to be subject to the like duties, restraints, and regulations, and be entitled to receive the like tolls, and exact the like penalties, exercise the like powers, rights, privileges, and immunities, and their toll-gatherers shall be subjected to the like penalties in every respect as are contained in the foregoing incorporation of the Newburgh and Chenango Turnpike Road Company, and that, all and singular, the provisions, parts, and clauses of the said incorporation, and every part thereof, not inconsistent with the particular provisions herein contained, shall be, and hereby are, fully extended to the president and directors of this incorporation.

"XLII. *And be it further enacted*, That for erecting a good and sufficient toll-bridge across the Esopus creek, on the road hereby established, the said president and directors shall be, and hereby are, authorized to demand and receive half toll, established for every ten miles' travel on the said road; and for erecting good and sufficient toll-bridges across the east and west branches of Delaware river, or at the termination of the road hereby established, the said president and directors shall be, and hereby are, entitled to demand and receive from all persons, for crossing each of the said bridges, with their chattels and effects, the full toll for every ten miles' travel on the said road hereby established; and that the said president and directors shall, at all times, during the continuance of this incorporation, maintain and support good and sufficient bridges, of at least twenty feet wide, over and across every other stream which shall be intersected by the road hereby established, free of expense.

42 "XLIII. *And be it further enacted*, That this act shall be, and the same is hereby, declared a public act."

The defendants' counsel objected to the reading of the same, as not sufficiently proved, and as not properly authenticated. The plaintiffs' counsel stated that he should prove that John Barber was printer to the State when said law was passed, and when said session law purported to be printed. The objection was overruled and said chapter eighty-nine was read in evidence, and was as aforesaid.

The plaintiff's counsel then offered to read in evidence from a printed book, entitled "Private Laws of the State of New York, passed at the thirty-first session of the legislature, begun and held at the city of Albany, the twenty-sixth day of January, 1808," at the bottom of the title page of which was printed, "Albany, printed by John Barber, printer to the State, 1808." Chapter CXIX of said law, which are in the words and figures following:

"CHAP. CXIX.

"AN ACT to amend the Nevisink Turnpike Road and Susquehanna Bridge Companies, incorporated by an act entitled 'An act to establish a corporation for improving and making a road from the village of Oxford, in the county of Chenango, to intersect the Newburgh and Cochecton turnpike road, and for other purposes.'

"Passed April 1st, 1808.

"Whereas, upon the petition of the president and directors, in behalf of all the stockholders, of the Nevisink Turnpike Road Company, it is deemed expedient to make certain amendments in those charters:

"*Be it therefore enacted by the people of the State of New York, represented in senate and assembly*, That it shall and may be lawful for the president and directors of the Nevisink Turnpike Road Company, by and with the consent of the majority of the stockholders of the said company, to cause to be laid out, made, and finished, as part of their turnpike road under their present charter

such section of road as shall, in the most direct and practicable manner, connect their present branch running from Kingston to the east branch of Delaware river, with the branch road of the said company leading from the Cook House to Chenango Point; and also, in like manner, to lay out, make, and finish
43 a branch road from the most convenient point on the said turnpike to Jericho bridge, or to the Ulster and Delaware turnpike road, about three miles distant from the same; upon which additional road they shall be, and hereby are, entitled to exact and receive, in the same manner, the same rate of toll as is secured to them for the road incorporated in their grant; and that in their said route they shall not be restricted to go along the houses of Eliza Hoornbeek and Ebenezer Reed, anything in the said charter of incorporation to the contrary notwithstanding.

"*And be it further enacted*, That the said company for erecting and maintaining a good and substantial toll-bridge across the Rondout river, on the route of the said road, under all regulations and provisions contained in their charter, in relation to the toll-bridge across the Nevisink river, shall be, in like manner, entitled to exact and receive the same rates of toll as they are entitled to for crossing the Nevisink toll-bridge.

"*And be it further enacted*, That the incorporation of the Susquehanna Bridge Company shall hereafter be deemed and considered to exist for the sole purpose of erecting and maintaining a toll-bridge, under their said charter, across the Susquehanna river, at Okquago, under all its present provisions, except the limitation of its duration of thirty years, which said limitation shall be, and hereby is, repealed; and that the capital of said company shall hereafter consist of ten thousand dollars in stock; and the time within which it shall be built shall be, and hereby is, extended to four years from the passing of this act.

"*And be it further enacted*, That for the purpose of erecting and maintaining a toll-bridge across the Chenango river, at or near Chenango Point, the present stockholders of the Susquehanna Bridge Company, or such others as shall associate for that purpose before the first day of January next, shall be, and hereby are, created a body corporate, in fact and in name, by the name and style of 'The Chenango Bridge Company,' and as such to have perpetual succession, under all the provisions, regulations, restrictions, clauses, and provisions of the before-mentioned Susquehanna Bridge Company, and their capital in stock shall consist of ten thousand dollars."

The defendants' counsel objected to the reading of the same, as not sufficiently proved, and as not properly authenticated. The plaintiffs' counsel stated
44 that he should prove that John Barber was printer to the State when said laws passed, and when said session laws purported to be printed.

The objection was overruled and said chapter CXIX was read in evidence, and was as aforesaid.

The plaintiff then read in evidence from the Assembly Journal of the State of New York of 1826, which purported to be printed by the printer of the State, from pages 794, 903, and 925, as follows:

Page 794.

"Mr. P. Robinson, from the committee on the establishment and improvement of roads and bridges, and the incorporation of turnpike companies, to whom was referred the petitions of the inhabitants of the several towns of the county of Broome, relative to the erection of a bridge across the Chenango river, in the village of Binghampton, reported:

"That the petitioners set forth that in the year 1805 an act was passed by the legislature of this State, entitled 'An act to establish a turnpike corporation for improving and making a road from the village of Oxford, in the county of Chenango, to intersect the Newburgh and Cohocton turnpike road, and for other

1963

purposes,' whereby the Delaware Bridge Company and the Susquehanna Bridge Company were created; the duration of which companies was limited in and by said act to thirty years; and that the said Susquehanna Bridge Company was authorized by said act, as well to erect a bridge across the Susquenanna river, at Akquago, as across the Chenango river, at or near Chenango Point; and that in the year 1808, by an act to amend the Neversink Turnpike Road and Bridge Companies, the limitation of the duration of the Susquehanna Bridge Company to thirty years was removed, whereby the Susquehanna Bridge Company became perpetual; and by the same act the Chenango Bridge Company was incorporated likewise, to exist perpetually, under all the provisions, regulations, restrictions, clauses, and provisions of the said Susquehanna Bridge Company.

"The petitioners further state that, by the act last aforesaid, the certificate of the judges of Delaware common pleas was required as a condition precedent to the authority to receive tolls; but that such certificate was never obtained until the year 1825.

"The petitioners further state that the village of Binghampton contains
45 about 800 inhabitants, and is situated on both sides of the Chenango river; and that the daily crossing of the inhabitants is indispensable, many citizens having their houses upon one side, and their stores or shops upon the other side of the river; that the mills, machinery, and churches are all situated upon one side of the river; that the principal stockholder of the Chenango Bridge Company resides in the city of New York, and that the inhabitants of the village of Binghampton suffer daily oppressions, hardships, and vexations from said company, unexampled, and almost innumerable, the present rates of commutation for crossing said bridge having been in some instances nearly trebled; and the company, since the present stockholders became interested therein, claiming the right to increase them at pleasure.

"The petitioners further state that the original act of incorporation was obtained by Lucas Elmendorf, esq., who at that time resided in Kingston, in Ulster county, and as the petitioners represent, was, at that time, a member of the legislature, without notice to the inhabitants of Binghampton; and that the act of 1808, making the grant distinct and perpetual, was also obtained by him, and passed without notice to the citizens of Broome county; that the act of incorporation does not require the company to commute with the citizens of Binghampton, nor does it contain the usual exemption from tolls in favor of persons going to church, &c., and the company, therefore have it in their power to exact their own terms of commutation, or compel every passenger to pay by the trip; that children cannot be sent to school from opposite sides of the river without being liable to pay one shilling per day each for toll; that commutations are required for one year in advance; that the bridge is very profitable to the company, paying more than 30 per cent. per annum on the actual cost thereof; that persons who cross the Chenango river in their own boats and canoes are threatened with prosecution therefor by the company, and that a new bridge can be built for about $3,000; the petitioners complaining of these and other oppressions, pray that a law may be passed authorizing the inhabitants of the town of Chenango to erect a toll-bridge across the Chenango river in the village of Binghampton. Many of the facts set forth by the petitioners are denied by the Chenango Bridge Company, the remonstrants in this case, and the said company insist that the passage of the act prayed for by the petitioners
46 would destroy the rights vested in said company by the acts of the legislature above mentioned.

"The committee are of opinion that the petitioners show a *prima facie* case of oppression and hardship; yet, as the committee are not lawyers by profession, and do not feel perfectly competent to give a decided opinion upon the question of vested rights, and although fully disposed to give the petitioners the relief

prayed for, if the facts set forth by the petitioners are true, and if the same can be done without a violation of legislative faith, yet, as there are doubts upon the subject, the committee pray to be discharged from the further consideration of the petitions referred to them, and that the same be referred to the standing committee on courts of justice to report thereon. The committee have directed their chairman to offer the following resolution:

"*Resolved*, That the committee on roads and bridges and the incorporation of turnpike companies be discharged from the further consideration of the petitions relative to the erection of a bridge at Chenango Point, in the county of Broome, and that the same be referred to the committee on courts of justice, with instructions to inquire whether the granting the prayer of the petitioners will interfere with the vested rights of the Chenango Bridge Company.

"Mr. Speaker put the question whether the house would agree thereto, and it was determined in the affirmative."

Page 903.

"Mr. Tracy, from the committee on courts of justice, to which was referred the memorial of sundry inhabitants of the town of Chenango, in the county of Broome, with instructions to inquire whether the granting the prayer of the memorialists will interfere with the vested rights of the Chenango Bridge Company, reported:

"The prayer of the memorialists is that the legislature will pass a law authorizing the town of Chenango to build a new bridge across the Chenango river; and from the whole memorial, it is inferred that the application is for authority to build the bridge across the river at the village of Binghampton, near Chenango Point.

"With this view of the application, the committee have investigated the subject referred to them, and inquired into the vested rights of the Chenango Bridge Company. In the year 1805, an act was passed which
47 incorporated the president and directors of the Delaware Bridge Company, and by that act it was enacted, 'That it shall not be lawful for any person or persons to erect any bridge, or establish any ferry across the said east and west branches of Delaware river, within two miles either above or below the bridges to be erected and maintained in pursuance of this act.' By the same act, the Susquehanna Bridge Company was incorporated, for the purpose of erecting and maintaining a good and sufficient toll-bridge across the Susquehanna river, and also for erecting and maintaining a good and sufficient toll-bridge over and across the Chenango river, at or near Chenango Point. And it is in and by said act declared that the Susquehanna Bridge Company 'shall be, and hereby are, invested with all and singular the powers, rights, privileges, immunities, and advantages, and shall be subject to all the duties, regulations, restraints, and penalties, which are contained in the foregoing incorporation of the Delaware Bridge Company, and all and singular the provisions, sections, and clauses thereof, not inconsistent with the particular provisions herein contained, shall be, and hereby are, fully extended to the president and directors of this incorporation.' In the year 1808, the Chenango Bridge Company was incorporated, under all the provisions, regulations, restrictions, clauses, and provisions of the before-mentioned Susquehanna Bridge Company.

"It appears by the above in part recited acts, that the Chenango Bridge Company was incorporated under all the provisions and regulations of the Susquehanna Bridge Company, and that the Susquehanna Bridge Company was invested with all the rights, privileges, and immunities of the Delaware Bridge Company, and one of the rights and privileges granted to the Delaware Bridge Company was, that no bridge or ferry should be established within two miles either above or below the bridges they were authorized to erect. The committee are

unanimously of the opinion that to authorize by law the building of another bridge across the Chenango, at or near Chenango Point, would interfere with the vested rights of the Chenango Bridge Company.

" Ordered, That the same lie upon the table."

Page 925.

" Mr Robinson made a motion that the house should agree to a resolution, in the words following, to wit :

"*Resolved*, That the petitions of the inhabitants of the several towns
48 of the county of Broome, praying that a law be passed authorizing the town of Chenango to build a bridge across the Chenango river, at or near Chenango Point, together with the report of the committee on roads and bridges and the incorporation of turnpike companies, and the report of the committee on courts of justice, be referred to a select committee, with instructions to report a bill granting the prayer of the petitioners, which bill shall contain an express provision that nothing therein contained shall interfere with, alter, or abridge the rights of the Chenango Bridge Company. Thereupon—

" Mr. Thompson made a motion that the house should agree to amend the said resolution by striking out the whole of the same after the word ' *Resolved*,' in the first line, and inserting, thereafter, the words following, to wit :

" 'That this house do agree with the committee on courts of justice, in the opinion expressed in their report in relation to the Chenango Bridge Company.'

" Debate was had thereon, and the question being put, whether the house would agree to the said amendment, it was determined in the affirmative."

And also read in evidence from the Assembly Journal of 1845, which purported to be published by the authority of the State and its then State printer and from pages 307, 471, 537, 646, 649, 752, 856, 1218 and 1225, as follows:

Page 307.

"Two several petitions of sundry inhabitants of the county of Broome, praying for an alteration of the charter of the Chenango Bridge Company, were read, and referred to the committee on roads and bridges."

Page 471.

" The remonstrance of sundry inhabitants of the county of Broome, against any interference with the charter of the Chenango Bridge Company, was read, and referred to the committee on roads and bridges."

Page 537.

" Mr. Moulton, from the committee on roads and bridges, to which was referred the petition of sundry inhabitants of the village of Binghamton, in the county of Broome, relative to the charter of the Chenango Bridge Company, reported favorably to the prayer of the petitioners, and asked leave to bring in a bill.

49 " Leave being granted, Mr. Moulton accordingly brought in the said bill, entitled ' An act in relation to the Chenango Bridge Company,' which was read the first time, and by unanimous consent was also read a second time, and committed to a committee of the whole house."

Page 646.

" On motion of Mr. Sweeney,

" *Resolved*, That the bill in relation to the Chenango Bridge be referred back to the committee on roads and bridges, to report complete."

Page 649.

"Mr. Frisbee, from the committee on roads and bridges, to which was recommitted the bill entitled 'An act in relation to the Chenango Bridge,' with instruction to report the same complete, reported that the committee had gone through the said bill and made an amendment thereto, and saw no reason why the said amended bill should not be passed into a law.

"Mr Morrison moved to refer the said bill to the committee on the judiciary.

"Mr. Speaker put the question whether the house would agree to the said motion of Mr. Morrison, and it was determined in the affirmative."

Page 752.

"Mr. T. R. Lee, from the committee on the judiciary, to which was referred the bill entitled 'An act in relation to the Chenango Bridge,' reported in writing, and concluded by offering the following resolution:

"*Resolved*, That the bill entitled 'An act in relation to the Chenango Bridge,' together with the report of the committee on the judiciary thereon, be referred to the attorney general."

[See Document No. 229.]

"Mr. Wheeler moved to recommit the said bill to the committee on the judiciary.

"Mr. Speaker put the question whether the house would agree to the said motion of Mr. Wheeler, and it was determined in the affirmative."

Page 856.

"Mr. T. R. Lee, from the committee on the judiciary, to which was recommitted the bill entitled 'An act in relation to the Chenango Bridge,' together with the report of the committee on the judiciary heretofore made upon that subject, reported the said bill and report back to the house, and recommended that the said bill be rejected on the ground of its being unconstitutional.

"Ordered, That the said bill be committed to a committee of the whole house."

Page 1218.

"On motion of Mr. L. H. Brown,

"The house proceeded to the consideration of the bill entitled 'An act in relation to the Chenango Bridge.'

"Mr. Coe moved to lay the said bill upon the table.

"Mr. Speaker put the question whether the house would agree to the said motion of Mr. Coe, and it was determined in the negative.

"Ayes, 41; nays, 62; absent, 25."

Page 1225.

"Mr. Bailey gave notice that to-morrow he would move to suspend all rules and orders of this house interfering with a motion he designed to make, to the effect that the bill entitled 'An act in relation to the Chenango Bridge,' be ordered to be engrossed for a third reading."

The plaintiff's read in evidence from a printed book purporting to be the Senate Documents, which purported to be printed by the authority of the State, and by the State printer, Document No. 87, as follows:

"No. 87.

"In Senate, *Mar.* 21, 1854.

"*Opinion of the attorney general on Senate bill No.* 41, *authorizing the construction of a toll-bridge across the Chenango river at Binghamton, and whether the provisions of said bill are constitutional.*

"The attorney general, to whom was referred the following resolution:

"*Resolved*, That the attorney general be requested to examine and
51 report to the senate, whether the senate bill No. 41, entitled 'An act authorizing the construction of a toll-bridge across the Chenango river at Binghamton, will, if passed, interfere with any vested rights of the Chenango Bridge Company, and whether the provisions of said bill are constitutional.'

"Doth respectfully submit the following opinion:

"In ordinary cases I would be content with expressing the opinion I had formed, and stating briefly the reasons upon which it was founded. But the question now presented is of so grave a character, involving, on the one side, the pecuniary interest of those who may be concerned in the corporate franchise, and who invoke for their protection the pledged faith of the State, and upon the other, the claims of an active and enterprising community, who may be daily advancing in numbers and in wealth, and to whom new channels of communication for travel and trade are necessary for convenience and prosperity. A question, the rightful answer to which is, to define the limits to the power of a sovereign State, and disarm them of powers essential to progress and advancement, that I have considered it my duty not only to devote to it deliberate consideration, but to set forth fully the authorities and the reasons which have produced the result to which I have arrived. There is also another reason which has induced this course. In my examination of this subject, and the opinion I have formed, I have found myself compelled to differ from apparently adverse decisions made by two of the most able and distinguished jurists of the State, and in opposition to whose judicial opinions mine would be entitled to but little weight. I have therefore considered it due to myself to state fully the grounds upon which I have ventured thus to differ, that the force or weakness of my objections may be understood and considered by the legislature, in their adoption or rejection of my opinion as a guide to their future action.

"An application for this very purpose was made to the legislature in 1826, and referred to the committee on courts of justice. This committee, on the 17th of March, 1826, made to the house a report, which, after setting forth the nature of the application, and the laws under which the Chenango Bridge Company
52 claimed that their vested rights would be interfered with, thus concludes: 'It appears by the act recited that the Chenango Bridge Company was incorporated under all the provisions and regulations of the Susquehanna Bridge Company, and that the Susquehanna Bridge Company was invested with all the rights, privileges and immunities of the Delaware Bridge Company, and one of the rights and privileges granted to the Delaware Bridge Company was, that no bridge or ferry should be established within two miles either above or below the bridges they were authorized to erect. The committee are unanimously of the opinion that to authorize by law the building of another bridge across the Chenango, at or near Chenango Point, would interfere with the vested rights of the Chenango Bridge Company.'

"The present attorney general was then a member of the committee who made the report above cited, and concurred in the opinion expressed, that the law then proposed, and which he assumes was similar to the one now submitted

to him, would interfere with the vested rights of the Chenango Bridge Company. Nor have I seen any reason to change the opinion then expressed.

"The same or a similar application was again made to the legislature in 1845, and the bill was referred to the committee on the judiciary, 'together with the report of the committee on the judiciary heretofore made on that subject, who reported the said bill and report back to the house, and recommended that the said bill be rejected on the ground of it being *unconstitutional*, and it was thereupon ordered that the said bill be committed to a committee of the whole house,' and no further action appears afterwards to have been had by the house in reference to the subject.

"I refer to this report, not only to show that, in the opinion of a respectable committee of the house, the law was deemed unconstitutional, but also to show after such repeated declarations of the legislature, that those who had previously or have since invested their funds in the corporation, may have had a right to consider that the faith of the State was pledged for the protection of their privileges and rights, and may well appeal to the justice of the legislature not now to disturb them.

"There can be no doubt that by the terms of the law the faith of the State was pledged, so far as could be pledged, that no other bridge should be built within two miles. This privilege to them, and restriction to others, must have been
one of the inducements to become stockholders of the company and ex-
53 pose their investments to the hazards and contingencies which would necessarily, in its inception, attend such an enterprise.

"That the privileges and immunities contained in the charter, and the exemption, within the prescribed limits, from all competition, must constitute a large portion of its value, and that to allow the erection of another bridge within the prescribed limits, as the law submitted to me proposes, would be an interference with the exclusive privileges, and seriously affect the interests and rights, of the Chenango Bridge Company.

'How far the legislature has the constitutional right to do this depends upon the answer to the last and most difficult branch of the inquiry propounded to me.

"Are the provisions of the bill referred to me constitutional?

"The answer to this question involves two considerations:

"1st. Are the provisions in this act repugnant to the Constitution of the United States, as impairing the obligation of a contract? And, if not,

"2d. Do they violate the 6th section of article 1 of the constitution of this State, which declares 'that no private property shall be taken for public use without just compensation?'

"I shall first consider the question (act) solely in reference to the Constitution of the United States.

"In examining the question of the constitutionality of the law in question, it is not enough to render it unconstitutional that it interferes with vested rights. It may do so and yet not violate the Constitution of the United States, unless it also impairs the obligations of a contract.

"In Satterlee against Matthewson, (2d Peters' U. S. Reports, page 453,) the court say: 'The objection most pressed upon the court by the counsel for the plaintiff was, that the effect of this act was to divest rights which were vested by law in Satterlee. There is certainly no part of the Constitution which applies to a State law of this description, nor are we aware of a decision which has condemned a State law upon this ground, provided its effect be not to impair the obligation of a contract.'

"And in Watson *vs.* Mercer, (8th Peters, page 110,) the court say: 'It is clear that this court has no right to pronounce an act of the State legislature
void, or contrary to the Constitution of the United States, from the mere
54 facts that it divests antecedent vested rights of property.'

"It this be so, the answer to the inquiry of the Senate, in its general form, will involve chiefly, if not solely, the single question:

"Does the law now under consideration impair the obligation of a contract, and thus be void as a violation of the Constitution of the United States?

"The case upon which the applicants for the new bridge no doubt strongly rely is the case of the Charles River bridge *vs.* the Warren bridge, decided by the Supreme Court of the United States in 1837.

"In that case the legislature of Massachusetts had incorporated a company to build a bridge over the Charles river, their charter being for forty years, which was afterwards extended to seventy years, granting them tolls, and subjecting them to the payment of £200 a year to Harvard College during the continuance of their charter. The bridge was built under the charter. The tolls were collected by the company, they always keeping the bridge in order, and performing all that was enjoined upon them to do.

"The legislature of Massachusetts subsequently incorporated another company, for the erection of the Warren bridge, over the same river, commencing and terminating near the same points where the Charles River bridge commenced and terminated.

"The Warren bridge was to become, and did become, a free bridge. The Charles River Bridge Company then filed a bill, first for an injunction to prevent the erection of the Warren bridge, and afterwards for general relief, on the ground that the act of the legislature authorizing the building of the Warren bridge was an act impairing the obligations of a contract, and therefore repugnant to the Constitution of the United States.

"The Supreme Court of the United States affirmed the decision of the supreme court of Massachusetts, dismissing the bill, and held that the act of the legislature of Massachusetts, incorporating the Warren Bridge Company, did not impair the obligations of contract and was not repugnant to the Constitution of the United States.

"But an examination of this case, and the grounds of the decision of the court, will show that it depended upon the question whether the State by granting the charter to the Charles River Bridge Company had, by *implication*, surrendered its sovereign power of future legislation for the convenience of the public?

"Chief Justice Taney, in delivering the opinion of the court, says:

55 'When a corporation alleges that a State has surrendered, for seventy years, its power of improvement and public accommodation, in a great and important line of travel, along which a vast number of its citizens must daily pass, the community have a right to insist 'that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear.' 'This act of incorporation is in the usual form, and the privileges such as are commonly given to corporations of that kind. It confers on them the ordinary faculties of a corporation, for the purpose of building a bridge, and establishes certain rates of toll, which the company is authorized to take. This is the whole grant. There is no exclusive privilege given them over the waters of Charles river, above or below their bridge. No right to erect another bridge themselves, *nor to prevent others from erecting one.* No engagement from the State that another shall not be erected; and no undertaking not to sanction competition, nor to make improvements that may diminish the amount of its income. Upon all these subjects the charter is silent; and nothing is said in it about a line of travel, so much insisted on in the argument, in which they are to have exclusive privileges. No words are used from which an intention to grant any of these rights can be inferred. If the plaintiff is entitled to them it must be implied, simply, from the nature of the grant; and cannot be inferred from the words by which the grant is made.' The inquiry

then is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be found in that instrument? It must be admitted on all hands that there is none—*no words that even relate to another bridge*, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be *by implication*, and cannot be found in the words used. Can such an agreement be implied? The rule of construction above stated is an answer to the question. In charters of this description, no rights are to be taken from the public, or given to the corporation beyond those which the words of the charter, by their natural and proper construction, purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied. The whole community are interested in this inquiry, and they have a right to require that the power of promoting their comfort and convenience, and of advancing the public prosperity, by providing safe, convenient, and cheap ways for the transportation of produce, and the purposes of travel, shall not be construed to have been surrendered or diminished by the State, unless it shall appear by plain words that it was intended to be done.' 56

"The whole reasoning of the court, it will be perceived, rests upon the ground that no exclusive privileges were expressly given over the waters of the Charles river above or below the bridge. *No right to prevent other persons from erecting a bridge within any limits* over the same river.¶

"The opinion of the learned chief justice would clearly lead to the inference that had the charter to the Charles River Bridge Company contained the same restrictions as are found in the charter of the Chenango Bridge Company, now under consideration, the decision would have been different, and incorporating the Warren Bridge Company, would have been declared void, as impairing the obligations of a contract. And even to this qualified decision I ought to add, that those of the most learned judges of the court, Mr. Justice McLean, Story and Thompson, dissented, they holding that the exclusive privileges to the Charles River Bridge Company were implied from the charter, and that the subsequent act to incorporate the Warren Bridge Company was unconstitutional and void.

"My attention has been directed to the case of the Oswego Falls Bridge Company against Fish and others, reported 1 Barbour's Chancery Reports, page 547, which is certainly a case, as far as its authority goes, in favor of the constitutionality of the act referred to me. The act incorporating the Oswego Falls Bridge Company, (laws of 1816, page 216,) declared that it should not be lawful for any person or persons to erect a bridge or establish a ferry across the said river, within two miles from the place where the said bridge shall be erected and built. The legislature of this State subsequently, in 1838, authorized a free bridge to be built within the prescribed limits. The Oswego Bridge Company filed a bill to enjoin the commissioners authorized by the act of 1838 from erecting such free bridge. This bill was dismissed by vice-Chancellor Gridley, and his judgment and decree were afterwards affirmed by the chancellor on appeal. But the decision of vice-Chancellor Gridley is founded upon the decision of the Charles river case in the Supreme Court of the United States. And he says: 'I feel bound to say, under the decision of that case, that the act under which the defendants were proceeding, when arrested by the injunction, is valid;' and Chancellor Walworth, after referring to the Charles River Bridge case, says, that 'that case cannot be distinguished from the present.' Both the vice-chancellor and the chancellor rely upon the decision in the Charles River Bridge case as settling the question, and the chancellor assumes that that case established the principle which he had before incidentally declared in the Mohawk Bridge Company *vs.* The Utica and Schenectady Railroad Company, as reported in 6 Paige, Chancery Report, page 554, &c., to which case I shall afterwards advert. 57

"The force of this decision, which is apparently conclusive in favor of the constitutionality of the law now submitted to me, is diminished, if not destroyed, by several considerations. The case is very briefly reported, and there is no allusion, either in the statement of the case, the imputed arguments of counsel, or in the opinion of either the vice-chancellor or chancellor, to the prohibitory section of the charter against the erection of any other bridge, within two miles of the one erected by the Oswego Bridge Company.

"Several of the positions taken by the counsel for the complainants, such as that public interest did not demand the new bridge, and the commissioners had not pursued the directions of the statute appointing them, are controverted by vice-Chancellor Gridley and overruled, but no allusion is made to the important, and, as I think, controlling, fact of the prohibition contained in the complainants' charter.

"It is certainly strange, that if this section had been pressed upon the attention of the court no allusion should have been made to it by the vice-chancellor in his opinion, when arguments of the counsel, comparatively unimportant, were considered and answered. And the chancellor, in affirming the decree of the vice-chancellor, says: 'The only question is, whether the legislature had the right to authorize the erection of a new bridge across the Oswego river, so near to the bridge which the complainants had erected under their charter, as to diminish their tolls and materially impair the profits of the company.' If this were the only question presented, then all that was decided was, that the diminution of tolls and the loss of profits was no restraint upon the power of the legislature, and formed no objection to the erection of a new bridge, and this alone had, in my judgment, been decided by the United States Supreme Court in the case of the Charles River Bridge Company. But the
58 great and important question growing out of the prohibition of the erection of a new bridge within the limits prescribed in the complainants' charter, does not appear from the report of the case to have been decided, or even considered by the court. It is obvious, too, that both these learned judges relied upon the decision of the Supreme Court of the United States as decisive of the case submitted to them. But if the construction which I have given to the opinion of the majority of the Supreme Court, as delivered by the learned Chief Justice, be correct, then such opinion, so far from authorizing and sustaining the decree of the vice-chancellor and chancellor, was in direct hostility to it, and formed no foundation for the decree of the court which rested upon it.

"The next case seemingly adverse to the positions I have taken is the case of the Mohawk Bridge Company *vs.* The Utica and Schenectady Railroad Company, reported in 6 Paige's Chancery Reports, page 555.

"The 7th section of the act incorporating the Mohawk Bridge Company declared that after the erection of their bridge it shall not be lawful for any person to erect or keep any ferry over the said river within one mile above or below the said bridge.

"The act incorporating the Utica and Schenectady Railroad Company gave the corporation authority, when it became necessary, to cross any stream of water, &c., to construct the road across the stream. They, under this power, proceeded to construct a bridge across the Mohawk. The Mohawk Bridge Company filed their bill to enjoin them from erecting such bridge, upon the ground, among others, not affecting the question now under consideration, that the carrying of passengers across the river in railroad cars would be a damage to the bridge company by diverting the travel from their toll-bridge.

"The chancellor, in denying the injunction, says: 'There cannot be a reasonable doubt as to the right of the Utica and Schenectady Railroad Company, under the provisions of their charter, to transport their passengers across the river in their railroad cars, *so long as they confine themselves to those who travel on the railroad*, and while they do not attempt to interfere with the privileges

of the toll-bridge company, by crossing with those who merely wish to cross the river in that way, to avoid paying toll at the other bridge. The legislature has, indeed, protected the Mohawk Bridge Company in the enjoyment of
59 an exclusive right to carry passengers across the river at Schenectady to a certain extent, by prohibiting others from establishing a ferry within a certain distance from the toll-bridge; but it has not deprived a future legislature of the right to authorize the erection of another bridge, within the prescribed limits, whenever the public good shall appear to require it. Much less is the legislature deprived of the power to provide for the conveyance of freight and passengers from one part of the State to another, by an improvement which was entirely unknown at the time when the grant to the bridge company was made. And if that grant had in terms given to the corporation the exclusive right of erecting a toll-bridge across the river at Schenectady, this subsequent grant to the railroad company to cross the river with their railway, and to transport passengers thereon in the ordinary course of their business in the conveyance of travellers from one place to another, would not have been an infringement of the privileges conferred by such prior grant, as the railroad bridge would not be a toll-bridge within the intent and meaning of the grant to the first company. Grants of exclusive privileges being in derogation of public rights belonging to the State, must be construed strictly, and with reference to the intent and particular objects of the grant.'

"The decision of the chancellor, it will be manifest, rested upon the fact that the transportation of passengers in the conveyance of travelers from one place to another could not be an infringement of the privileges conferred by such prior grant. As the railroad bridge would not be a toll-bridge within the intent and meaning of the grant to the first company, as all grants of exclusive privileges must be construed strictly. This was the ground of the decree dismissing the bill, and the declaration as to what he considered the power of the legislature in other cases is an obiter dictum, not called for by the facts, not necessary to the decision of the case, and doubtful as to the precise meaning which is to be attached to his language, and uncertain as to the extent to which he intended the principle should be carried.

"But, in addition to these decisions of the chancellor and vice-chancellor of our State, to which I have not attributed, for the reasons stated by me, as much weight as their high judicial character would otherwise demand, there are others which decide the question fully, and upon argument and consider-
60 ation. I refer to Thompson *vs.* The New York and Harlem Railroad Company, reported in 3 Sanford's Chancery Reports, page 657; and The Enfield Toll-Bridge Company *vs.* The New Haven and Hartford Railroad Company, in 17 Connecticut Reports, page 460.

In both these cases questions almost identical with the one presented by the act referred to me arose, and in both the decisions of the court, after full argument, was in favor of the constitutionality of the law as not impairing the obligations of contract.

"The decision of the Supreme Court of the United States must, until reviewed or modified, remain, as to all questions arising under the Constitution of the United States, the supreme law of the land.

"My views as to the extent and meaning of that decision I have already expressed; and if they differ from the construction that has been given to it by the learned judges and courts to wh m I have referred, I have, as an excuse for venturing to express my own opinion, the authority of Chancellor Kent, who, in his commentary on this branch of constitutional law, says: 'The decision in the Charles River Bridge Company case, is not only universally acknowledged, but its doctrine has been carried to an extent far beyond the reasoning of Chief Justice Taney,' and cites the cases from Connecticut and New York as proofs of the assertion.

"In answer, therefore, to the first branch of the question propounded to me, I will say, that although my own opinion, taking the Charles River Bridge Company case as my guide, remains unchanged, and that *the law proposed does violate the obligations of a contract;* yet in deference to the judgments and decrees of the high judicial tribunals of our own and others States, to which my own individual opinion ought to yield, I must declare that the weight of authority is in favor of the constitutionality of the law, as not repugnant to the Constitution of the United States.

"But, if it be not repugnant to section 10 of the first article of the Constitution of the United States, is it in violation of the 5th article of the amended Constitution of the United States, and of the sixth section of article 1 of the constitution of this State?

"The constitution of our State, as well as the Constitution of the United States, declares 'that private property shall not be taken for public use without just compensation.'

"Is, then, the charter to erect a bridge and collect tolls, as granted by
61 the authority of the State, private property, belonging to the corporation of the Chenango Bridge Company, and is it taken by this bill for public use?

"An estate in a franchise and an estate in land rest upon the same principles, being equally grants of a right or privilege; and Mr. Dane, in his Abridgement, after having spoken of a ferry as imposing burdens publici juris, adds:

"'In this way a ferry becomes property, an incorporeal hereditament, the owners of which, for the public convenience, being obliged by law to perform certain public services, must, as a reasonable equivalent, be protected in *this property*.' (2 Dane's Abridgement, chap. 67, page 683.)

"Mr. Justice Story says, in the Dartmouth College case, (4 Wheaton, 649.) that 'a grant of a franchise is not, in any point of property, distinguishable from a grant of any other property.'

"'A franchise (says Mr. Justice Daniels, in The West River Bridge Company *vs.* Dix, 6 Howard, 336,) is property, and nothing more. It is incorporeal property, and is so defined by Justice Blackstone, when treating of the 'rights of things.' It is its character of property only which imparts to it value, and alone authorizes in individuals a right of action for conversions or disturbance of its enjoyment. A franchise, therefore, to erect a bridge, to keep a ferry, and to collect tolls upon them, granted by the authority of the State, we regard as occupying the same position as does the right of the citizen to the possession and enjoyment of his land, and to his patent and contract with the State.'

"And Mr. Justice McLean says: 'It is objected that this bridge, being owned by a corporation and used by the public, does come within the designation of private property. All property, whether owned by an individual or individuals, a corporation aggregate or sole, is within the term. In short, all property not public is private.'

"In his opinion on The Charles River Bridge *vs.* Warren Bridge *et al.*, Justice McLean further says: 'The right granted to the Charles River Bridge Company is, in its nature, to a certain extent, exclusive; but to measure this extent presents the chief difficulty. If the boundaries of this right could be clearly established, it would scarcely be contended by any one that the
62 legislature could, *without compensation*, grant to another company the whole or any part of it. The principle is the same in regard to the question under consideration. If the franchise granted to the complainants extended to the new bridge, it was as much above the power of the legislature to make the second grant as it would be to grant a part of a tract of land for which a patent had been previously and regularly issued.

"The franchise, though incorporeal in legal contemplation, has body and extension, and having been granted, is not less scrupulously guarded by the

principles of law than an interest in the soil. It is a substantial right in law, and can no more be resumed by the legislature, when once granted, than any other right.

"But it is said that any check to the exercise of this discretion by the legislature will operate against the advance of improvements. Will not a different effect be produced? If every bridge or turnpike company were liable to have their property wrested from them under an act of the legislature, *without compensation*, could much value be attached to such property? Would prudent men expend their funds in making such improvements? 'When land is granted the State can exercise no acts of ownership over it, unless it be taken for public use:' and the same rule applies to a grant for a bridge, a turnpike road, or any other improvement.

"It has been decided by the supreme court of New York, that unless the act making the appropriation of private property to public use contained provisions of indemnity, it is void.

"But was the complainants' property appropriated under the charter granted to the respondents for public purposes? If the new bridge were deemed necessary by the legislature to promote the general convenience, and the defendants were consequently authorized to construct it, and a part of the plaintiffs' franchise was granted to the defendants, *it was an appropriation of private property for public use.* It was as much an appropriation of private property for public use as would have been the appropriation of the ground of an individual for a turnpike or a railroad authorized by law. (11 Peters, U. States Reports, 560, 564, 569, 570.)

"And if it is said that this act does not take any property belonging to the Chenango Bridge Company the answer is, that it takes the life of it, when it takes the means whereby it lives; or, as Justice McLean well says:
63 "The legislature cannot bring a citizen to the block; may it open his arteries? It cannot cut off his head; may it bleed him to death?"

"The value of the franchise is not to be estimated by the quantity of timber and stones the bridge may contain, but the travel over it; and if one-half of the travel over it be diverted to the new bridge, the injury is as great, and may be greater, than if the whole bridge had been taken and destroyed. The diverting the travel is, *pro tanto*, the taking the property of the owners of the franchise.

"And Justice Story, in the case above cited, (11 Peters, 638,) says, 'the franchise of a bridge or ferry, so far as it reaches, is private property; and so far as it is injured, it is the taking away of private property.' Suppose a man is the owner of a mill, and the legislature authorizes a diversion of the water-course which supplies it, whereby the mill is injured or ruined; are we to be told that this is a consequential injury, and not within the scope of the Constitution? If not within the scope of the Constitution, it is, according to the fundamental principles of a free government, a violation of private rights, *which cannot be taken away without compensation.*

"The case of Gardner *vs.* the village of Newburg, (2 Johnson's Chancery Reports, 139,) would be a sufficient authority to sustain this reasoning, if it did not stand upon the eternal principles of justice recognized by every government which is not a despotism.'

"And in the case thus cited by Justice Story, (from 2d Johnson,) Chancellor Kent, after admitting the power of the legislature to take private property for necessary public purposes, says:

"'But, to render the exercise of the power valid, a fair compensation must, in all cases, be made to the individuals affected, under some equitable assessment, to be provided by law. Such necessary qualification to the exercise of legislative power is adopted by all temperate and civilized governments, from a deep and universal sense of its justice. I am, therefore, forced to conclude that a *provision for compensation* is *an indispensable attendant* on the *constitutional* exercise of the power of depriving an individual of his property.'

"If this, then, be private property, is it taken for public use? The objection has been stated that in the case of railroad corporations the property has been taken, not for public use, but for the private use and benefit of the cor-
64 poration. But such proceedings have always been sustained upon the ground, that although the enterprise has been undertaken with a view to private emolument, yet the ultimate purpose is the public convenience, and that if the legislature can take private property for such purposes, it may be taken through the agency of a corporation, as well as that of a public executive officer. I am aware that acts similar to the one under consideration have often been passed by the legislature, which acts have interferred with the chartered rights of companies previously incorporated, and have been acquiesced in by such companies as valid; and that such acquiescence has been invoked as justifying the inference that they must be constitutional.

"It is not for me to judge and determine what were the motives which governed such companies in such acquiescence; but I cannot admit that either their acquiescence in or resistance to the law would form an element of the judgment which is to be pronounced as to their constitutionality.

"I am, upon the whole, after much reflection, of the opinion that the franchise of erecting a bridge and collecting tolls within the limits prescribed by their charter, is the private property of the Chenango Bridge Company. That the erection of a new bridge within their limits would be the *taking of their private property for public use*, to the extent and so far as such new bridge would diminish their tolls, and thus impair their exclusive right which they now possess, and that unless the act shall provide for just compensation being made to the Chenango Bridge Company, it is in violation of both the constitution of this State and of the United States, and is void.

"O. HOFFMAN,
Attorney General."

The plaintiffs then read in evidence from a printed book purporting to be the senate journal, and which purported to be printed by authority of the State, and by the State printer, from pages 106, 119, 227, 268, and 331, as follows:

Page 106.

"Mr Bradford presented the petition of citizens of Broome county for a toll-bridge across the Chenango river at Binghamton, which was read and referred to the committee on roads and bridges."

Page 119.

65 "Mr. Bradford, from the committee on roads and bridges, to which was referred the petition of inhabitants of Binghamton for a toll-bridge at Binghamton, asked and obtained leave to bring in a bill entitled 'An act to incorporate the Binghamton Bridge Company,' which was read the first time, and by unanimous consent was also read the second time, and referred to the committee of the whole."

Page 227.

"Mr. Bradford presented the remonstrance of the Chenango Bridge Company against the incorporation of the Binghamton Bridge Company, which was read and referred to the committee of the whole when on the bill upon that subject."

Page 268.

"Mr. Bradford presented the petition of the trustees and 500 citizens of Binghamton for a toll-bridge across the Chenango river at that place, which was

read and referred to the committee of the whole when on the bill upon that subject."

Page 331.

"On motion of Mr. M. H. Clark,

"*Resolved*, That the attorney general be requested to examine and report to the senate whether the provisions of senate bill No. 41, entitled 'An act authorizing the construction of a toll-bridge across the Chenango river at Binghamton,' will, if passed, interfere with any vested rights of the Chenango Bridge Company, and whether the provisions of said bill are constitutional."

The defendants' counsel objected to the same as inadmissible, and as not duly authenticated. The plaintiffs' counsel stated that he should prove that the same was printed by the then printer to the State. The defendants' objection was overruled.

Edward Tompkins, a witness called by the plaintiffs, testified: I am a stockholder and the treasurer of the Chenango Bridge Company, and reside in Binghamton; the session laws of 1805 and 1808, and which have been read in evidence, and purport to be printed by John Barber, printer to the State. I have seen printed books of the statutes of this State, in which his name was
66 inserted as printer, and I understand from repute that he was printer to the State in 1805 and 1808; the assembly and senate journal and senate document were brought into court from the library of this county; the same purport to be printed by persons who were at the time printers to the State; I have resided in Binghamton most of the time for thirty-nine years; have been absent for an interval of ten years; I have been acquainted with the plaintiffs' bridge for nearly thirty-nine years; the first bridge, I have always understood, was erected in 1808 by these plaintiffs; the second bridge the plaintiffs erected in 1825, and in 1845 they erected the present bridge; this place was called Chenango Point in 1808; I have been secretary and treasurer of plaintiffs' company for five or six years; about one year last December the defendants' bridge was in full use, since which the diminution of tolls at the plaintiffs' bridge has been $400 per year; the plaintiffs have remonstrated to the legislature, and have not acquiesced in the building of the defendants' bridge, and have done what they could to prevent the same; E. D. Robinson is president of the defendants' company, and witness has, on behalf of the plaintiffs, demanded damages for the injury of the defendants' bridge to the plaintiffs; he made the demand of damages of the president of the defendants' company; Mr. Robinson said he would consult with his associate directors; Mr. Robinson afterwards answered that the defendants would not pay any damages; that witness remonstrated to the governor against said act, and asked his veto thereon.

Cross-examined.

The plaintiffs' bridges have all been at the same place; the nominal capital of the plaintiffs' company is $10,000; there is nothing in the books of the company to show the cost of the bridges; the first bridge was dearer than either of the others; the present bridge cost $4,500, not including the work under water; the second bridge costs $3,500; there is no record of any dividends until thirty years ago; the average dividends are sixteen and five-eighths per cent. on $10,000; there has been paid in of capital $16,000 or $17,000; the first payments were $9,000; the second bridge was built by Colonel Lewis at a cost of $2,500; the population of this village is about 9,000 or 10,000, and the village is built on both sides of the same river; there are three bridges within the corporation on the Susquehanna river; there are no other bridges over the Chenango river in the village than the plaintiffs' and defendants' except the Erie
67 railroad bridge; the village has increased much on both sides of the Chenango river, and proportionably on the west side; the population on the

west side is from 1,500 to 2,000; I estimate it some 7,000 on the east side, on the north side of the Susquehanna river; there are two young ladies schools and the Susquehanna Seminary and a large new cemetery on the west side of the Chenango river; there are nine or ten churches, and all of them are on the east side of the river but the Catholic; almost all of the business of the village is done on the east side of the Chenango river, and persons residing on the west side of the Chenango river mostly do their business on the east side; there is a larger population west of the Chenango river than south of the Susquehanna river; two railroads receive and discharge their passengers here—on the east side of the Chenango river; the New York and Erie and Syracuse and Binghamton railroads have depots on the east side of the river, and about eighty rods from the defendants' bridge and about one hundred and thirty-five rods from the plaintiffs' bridge; the plaintiffs' bridge was injured by the last spring's ice flood and needs repairing; in December, 1848, the New York and Erie railroad commenced business at Binghamton, and business and population have extended up the river since the New York and Erie railroad was completed; the plaintiffs' bridge will have to be rebuilt within eight or ten years.

The witness further testified that, if the plaintiffs' bridge should be carried off it would take three months to build a new bridge, but a less time if the structure was taken down; the tolls on the plaintiffs' bridge fell off on the building of the New York and Erie railroad, but in a few months the tolls commenced steadily increasing; the construction of the Syracuse and Binghamton railroad, in 1853, caused a considerable diminution in the receipts of tolls on the plaintiffs' bridge, but the per cent. was not known to him.

I saw the bill of 1854 before the governor in the governor's hand; never knew what became of it; before the passage of the bill of 1855, the plaintiffs remonstrated thereto in writing to the legislature, and set up their claims then as in this action, and on behalf of the plaintiffs, witness addressed Governor Clark in writing before he signed the bill, claiming that the same was unconstitutional.

Direct resumed.

The last I saw or heard of the defendants' bill of 1854, it was in Governor Seymour's hands, and I never heard it was missing until recently;
68 never at any time are crowds detained on plaintiffs' bridge; the plaintiffs' bridge is of sufficient capacity to accomodate a large travel; it has side walks and a double track for teams.

Re-cross examined.

The double tracks are walled up to the heigth of about six feet.

The defendants read in evidence from the assembly journal of 1855, from pages 159 and 171, as follows:

Page 159.

"Mr McKinney presented a petition from citizens of Binghamton for an act authorizing a bridge across the Chenango river, which was read and referred to the committee on roads and bridges."

Page 171.

"Mr. J. P. Bennett, from the committee on roads and bridges, to which was referred the petition of citizens of Binghamton praying for an act authorizing a bridge across Chenango river, reported, and asked and obtained leave to introduce a bill entitled 'An act to incorporate the Binghamton Bridge Company,' which was read the first time, and by unanimous consent was also read the second time, and committed to the committee of the whole."

And also read from the senate journals of the same year from pages 435, 459, 493, 501, and 558, as follows:

Page 435.

"'An act to incorporate the Binghamton Bridge Company,' which was read the first time, and by unanimous consent was also read the second time, and referred to the committee on roads and bridges.'"

Page 459.

"Mr. Williams presented a remonstrance of the Chenango Bridge Company against the act chartering the Binghamton Bridge Company, which was read and referred to the committee on roads and bridges."

Page 493.

"Mr. Bradford, from the committee on roads and bridges, to which was referred the assembly bill entiled 'An act to incorporate the Binghamton
69 Bridge Company,' reported in favor of the passage of the same without amendment, and said bill was recommitted to the committee on roads and bridges, to report complete."

Page 501.

"Mr. Walker, from the committee on roads and bridges, to which was referred the assembly bill intitled 'An act to incorporate the Binghamton Bridge Company,' to report complete, reported the same complete, without amendment, which report was agreed to, and said bill ordered to a third reading."

Page 558.

"The assembly bill, 'An act to incorporate the Binghamton Bridge Company,' was read a third time.

"The president put the question whether the Senate would agree to the final passage of said bill, and it was decided in the affirmative, a majority of all the members elected to the senate voting in favor thereof, and three-fifths of said members being present."

Christopher Eldredge, called as a witness, testified: I have resided in Binghamton since 1804 or 1805; the population then occupied but two or three buildings; it did not increase rapidly; in 1808 there may have been fifteen or twenty houses; the inhabitants were few and far between; there was very little travel; the population of the surrounding country was sparse; the plaintiffs' bridge is about 80 rods from the mouth of the Chenango river; the Chenango empties into the Susquehanna; I am acquainted with the Delaware river, which has an east and west branch; this village has increased more rapidly since the railroad was constructed than before; this village was mostly a wilderness in 1805 and 1808.

Levi Dimmick, called by the defendants, testified: I have lived here since the spring of 1828; the village has doubled since the New York and Erie railroad was constructed; the north part of the village has increased the most; the population has increased more on the Chenango than on the Susquehanna; the cemetery was located three or four years ago; the cemetery and water-cure are both on the west side of the Chenango, above the defendants' bridge; the population of the north part of the town would naturally cross the new bridge; the population on the west side of the Chenango is about equal
70 above and below the plaintiffs' bridge; I have seen teams stand on the plaintiffs' bridge fifteen or twenty minutes when one side was undergoing

repairs, waiting for other teams to cross from the other side when there were funerals, and I have seen a long anti-Masonic procession on the bridge and detained there for some time.

Cross-examined.

The plaintiffs' bridge has always been kept in good repair.

The defendants here read in evidence an act entitled "An act to incorporate the Binghamton Bridge Company, passed April 5th, 1855, as follows, from the session laws of 1855, page 244:

"CHAP. 164.

"AN ACT to incorporate the Binghamton Bridge Company.

"*The people of the State of New York, represented in the senate and assembly, do enact as follows:*

"§ 1. All persons who shall become stockholders pursuant to this act, shall be, and they are hereby, constituted a body corporate, by the name of Binghamton Bridge Company, with power to construct a bridge across the Chenango river, in the village of Binghamton, in the county of Broome, at a point not less than eighty rods above the present bridge, and south of the New York and Erie Railroad Bridge, said bridge to be not less than eighteen feet in width, and secured by good and substantial railing.

"§ 2. As soon as the said bridge shall be so far completed as to admit of the safe passage of horses and carriages, it shall be lawful for said company to ask demand, or take, for the use of crossing of the said bridge, a toll not exceeding that authorized to be taken by the Susquehanna Bridge Company in the village of Binghamton.

"§ 3. The capital stock of said company shall be ten thousand dollars, divided into four hundred shares of twenty-five dollars each, which shall be deemed personal property, and shall be assignable and transferable on the books of the company according to the by-laws thereof; and the directors of said com-
71 pany shall have power to call in the capital stock at such times and in such instalments, and upon such terms, as the said directors for the time being shall prescribe, under the penalty of forfeiture of stock and all previous payments.

"§ 4. The said company is hereby empowered to purchase, receive, and hold, such real estate on either side of the river, as may be necessary or convenient for the use and purpose of said bridge; in case the company cannot agree with the parties owing the land so required, after having been surveyed or mapped by their engineer or agent, the said company are authorized to acquire title to such land in the same manner that railroad companies acquire title to real estate for railroad purposes.

"§ 5. Daniel S. Dickinson, E. D. Robinson, E. C. Kattle, Henry Mather, and Morgan S. Lewis, are hereby appointed the commissioners to open the books for the purpose of receiving subscriptions for the stock of said company; and they the said commissioners, or a majority of them, shall, on or before the first day of August next, open books at some suitable place for the purpose of receiving said subscriptions.

"§ 6. When two-thirds of the capital stock of said company is subscribed, on ten days' notice given by the commissioners, or a majority of them, a meeting of the stockholders shall be held for the election of five directors for said company; the commissioners, or such of them as are present, shall preside at the election, and such election shall be made at the time and place appointed by the commissioners, the vote shall be by ballot, and each stockholder shall be entitled to one vote on each share of stock held by him, and which shall have stood in

his name fourteen days previous to any election, which may be voted personally or by proxy; the directors so elected shall elect from their number a president and secretary, the secretary to be ex-officio treasurer of the company, and said directors shall hold their office until the first day of January after such election, and until others are elected in their places; all future elections of directors shall be annually by ballot as above provided, upon the day or days named in the by-laws of the company for such election, and the persons having the greatest number of votes shall be directors.

"§ 7. If any person or persons shall pass the said bridge, either forcibly or secretly, without paying, and with intent to evade the payment of toll, such person or persons shall forfeit to the said company the sum of five dollars for each offence, to be recovered with costs of suit; and if any person or persons
72 shall dig down, remove, or injure any of the banks of said river, at or near the said bridge, so as to endanger, injure, or destroy the same, or shall willfully do, or cause to be done, any act whatsoever, whereby the said bridge, toll-house, or anything appertaining thereto, or to either of them, shall be impaired, weakened, or injured, the person or persons so offending shall forfeit and pay to the said company treble damages, with costs of suit, to be recovered in any court having cognizance thereof.

"§ 8. The powers granted by this act shall be in force forty years after the completion of the said bridge.

"§ 9. This corporation shall possess the powers, and be subject to the provisions, contained in the third title of the eighteenth chapter of the first part of the revised statutes."

Passed April 5th, 1855.

Here the evidence closed, and the above is all the evidence offered on the trial of said action.

The action was then submitted to the said justice on the foregoing evidence.

His honor afterwards directed judgment for the defendants.

His honor found as facts as follows:

Finding of facts.

"The rights asserted by the plaintiffs are claimed to have been derived under an act of the legislature of this State, entitled 'An act to establish a turnpike corporation for improving and making a road from the village of Oxford, in the county of Chenango, to intersect the Newburg and Cochecton turnpike road, and for other purposes,' approved April 8th, 1805, and an act amending the same passed April 1st, 1808.

"The original act first incorporated the Newburg and Chenango Company, and gave the corporation *continual* succession, and then for the purpose of opening a communication by turnpike road from Chenango Point (now Binghamton) to intersect the Newburg and Chenango turnpike, and to open a communication as well from Oxford as Chenango Point to Kingston, incorporated the Neversink Turnpike Company, and gave that corporation *continual* succession.

"The act then recited that 'whereas the forgoing road incorporation' could not be sufficiently carried into effect, unless permanent bridges across the Susquehanna and Chenango rivers and the east and west branches
73 of the Deleware river at the several places of intersection of the said road should at the same time be erected and maintained; and that by reason of the expense necessarily incurred in erecting and maintaining such bridges on account of the size and rapidity of those streams, and the extraordinary freshets and frequent obstructions happening in those rivers to which such bridges would be exposed, and which would endanger their permanency and durability, and might call for the frequent renewal of the whole capital required for building such bridges, and might, therefore, require a power of calling

from stockholders from time to time such sums as should be required for upholding such bridges, and which forbid the policy incorporated into the foregoing corporations, that the said property should revert to the State whenever they should be reimbursed their expenses.

"The act further recited, that it had been suggested that it would be most expedient to make two separate and distinct bridge corporations, with powers adequate to the accomplishment thereof in the best possible manner. Therefore, certain persons named, and all others that should associate for the purpose of erecting a bridge over and across the west branch of the Delaware river, and over and across the east branch of the Delaware river, where the turnpike road to be laid out should cross the same, their successors and assigns were created a body corporate, by the name of 'The president and directors of the Deleware Bridge Company,' and given *perpetual* succession. It was then enacted that it should not be lawful for any person or persons to erect any bridge or establish any ferry across *the east or west branch* of the Delaware, either above or below the bridges to be erected and maintained in pursuance of that act, or forcibly to pass either of the bridges without having previously paid to the toll-gatherer, for the use of the corporation, the toll establish by the act of incorporation, under a penalty of ten dollars, to be recovered for the use of the corporation. Provision was then made that all persons residing within two miles of the bridge might cross the river to or from his or her house or land, with his or her own boat or craft, without being subject to the payment of any tolls, and that after the expiration of thirty years from the passage of the act, the bridge, with the appurtenances, was to become the property of the people of this State.

"After these corporations were created, and their rights, limitations,
74 and liabilities fixed, the legislature in the same act proceeded to enact, that for the purpose of erecting and maintaining a good and sufficient toll-bridge over and across the Susquehanna river, at or near Ouquago, in the county of Tioga, and for the purpose of erecting and maintaining a good and and sufficient toll-bridge over and across the the Chenango river, at or near Chenango Point, (now Binghamton,) all such persons as should associate for that purpose, their successors and assigns, should be a body politic and corporate, by the name of 'The Susquehanna Bridge Company,' and that their successors and assigns should have *perpetual* succession, and be invested with *all and singular the powers, rights, priviliges, immunities and advantages,* and be subject *to all the restraints* contained in the incorporation of the Delaware Bridge Company, and all and singular the provisions, sections and clauses, *not inconsistent with the particular provisions herein contained.* The amendments to this act passed April 1st, 1808, provided that the Susquehanna Bridge Company should thereafter be deemed and considered to exist for the sole purpose of erecting and maintaining a toll bridge under the said charter across the Susquehanna river, at Ouquago, under all its present provisions except the limitation of its duration for thirty years, which limitation was thereby repealed.

"It was then further enacted that for the purpose of erecting and maintaining a toll-bridge across the Chenango river, at or near Chenango Point, (now Binghamton,) the then present stockholders of the Chenango Bridge Company, or such others as should associate for that purpose before the first day of January then next, should be and were created, a body corporate by the name and style of the 'Chenango Bridge Company,' and as such have *perpetual succession 'under all the provisions, regulations, restrictions, clauses and provisions of the before mentioned Chenango Bridge Company.'*

"Under this charter the plaintiffs erected their bridge in 1808, over and across the Chenango river, about eighty rods above Chenango Point, the confluence of the Chenango with the Susquehanna river, and have ever since continued to enjoy the full benefits of their charter without competition, within the distance of two miles of their bridge, until the defendants, under an act of the legislature

his name fourteen days previous to any election, which may be voted personally or by proxy; the directors so elected shall elect from their number a president and secretary, the secretary to be ex-officio treasurer of the company, and said directors shall hold their office until the first day of January after such election, and until others are elected in their places; all future elections of directors shall be annually by ballot as above provided, upon the day or days named in the by-laws of the company for such election, and the persons having the greatest number of votes shall be directors.

"§ 7. If any person or persons shall pass the said bridge, either forcibly or secretly, without paying, and with intent to evade the payment of toll, such person or persons shall forfeit to the said company the sum of five dollars for each offence, to be recovered with costs of suit; and if any person or persons
72 shall dig down, remove, or injure any of the banks of said river, at or near the said bridge, so as to endanger, injure, or destroy the same, or shall willfully do, or cause to be done, any act whatsoever, whereby the said bridge, toll-house, or anything appertaining thereto, or to either of them, shall be impaired, weakened, or injured, the person or persons so offending shall forfeit and pay to the said company treble damages, with costs of suit, to be recovered in any court having cognizance thereof.

"§ 8. The powers granted by this act shall be in force forty years after the completion of the said bridge.

"§ 9. This corporation shall possess the powers, and be subject to the provisions, contained in the third title of the eighteenth chapter of the first part of the revised statutes."

Passed April 5th, 1855.

Here the evidence closed, and the above is all the evidence offered on the trial of said action.

The action was then submitted to the said justice on the foregoing evidence.

His honor afterwards directed judgment for the defendants.

His honor found as facts as follows:

Finding of facts.

"The rights asserted by the plaintiffs are claimed to have been derived under an act of the legislature of this State, entitled 'An act to establish a turnpike corporation for improving and making a road from the village of Oxford, in the county of Chenango, to intersect the Newburg and Cochecton turnpike road, and for other purposes,' approved April 8th, 1805, and an act amending the same passed April 1st, 1808.

"The original act first incorporated the Newburg and Chenango Company, and gave the corporation *continual* succession, and then for the purpose of opening a communication by turnpike road from Chenango Point (now Binghamton) to intersect the Newburg and Chenango turnpike, and to open a communication as well from Oxford as Chenango Point to Kingston, incorporated the Neversink Turnpike Company, and gave that corporation *continual* succession.

"The act then recited that 'whereas the forgoing road incorporation' could not be sufficiently carried into effect, unless permanent bridges across the Susquehanna and Chenango rivers and the east and west branches
73 of the Deleware river at the several places of intersection of the said road should at the same time be erected and maintained; and that by reason of the expense necessarily incurred in erecting and maintaining such bridges on account of the size and rapidity of those streams, and the extraordinary freshets and frequent obstructions happening in those rivers to which such bridges would be exposed, and which would endanger their permanency and durability, and might call for the frequent renewal of the whole capital required for building such bridges, and might, therefore, require a power of calling

from stockholders from time to time such sums as should be required for upholding such bridges, and which forbid the policy incorporated into the foregoing corporations, that the said property should revert to the State whenever they should be reimbursed their expenses.

"The act further recited, that it had been suggested that it would be most expedient to make two separate and distinct bridge corporations, with powers adequate to the accomplishment thereof in the best possible manner. Therefore, certain persons named, and all others that should associate for the purpose of erecting a bridge over and across the west branch of the Delaware river, and over and across the east branch of the Delaware river, where the turnpike road to be laid out should cross the same, their successors and assigns were created a body corporate, by the name of 'The president and directors of the Deleware Bridge Company,' and given *perpetual* succession. It was then enacted that it should not be lawful for any person or persons to erect any bridge or establish any ferry across *the east or west branch* of the Delaware, either above or below the bridges to be erected and maintained in pursuance of that act, or forcibly to pass either of the bridges without having previously paid to the toll-gatherer, for the use of the corporation, the toll establish by the act of incorporation, under a penalty of ten dollars, to be recovered for the use of the corporation. Provision was then made that all persons residing within two miles of the bridge might cross the river to or from his or her house or land, with his or her own boat or craft, without being subject to the payment of any tolls, and that after the expiration of thirty years from the passage of the act, the bridge, with the appurtenances, was to become the property of the people of this State.

"After these corporations were created, and their rights, limitations,
74 and liabilities fixed, the legislature in the same act proceeded to enact, that for the purpose of erecting and maintaining a good and sufficient toll-bridge over and across the Susquehanna river, at or near Ouquago, in the county of Tioga, and for the purpose of erecting and maintaining a good and and sufficient toll-bridge over and across the the Chenango river, at or near Chenango Point, (now Binghamton,) all such persons as should associate for that purpose, their successors and assigns, should be a body politic and corporate, by the name of 'The Susquehanna Bridge Company,' and that their successors and assigns should have *perpetual* succession, and be invested with *all and singular the powers, rights, priviliges, immunities and advantages*, and be subject *to all the restraints* contained in the incorporation of the Delaware Bridge Company, and all and singular the provisions, sections and clauses, *not inconsistent with the particular provisions herein contained.* The amendments to this act passed April 1st, 1808, provided that the Susquehanna Bridge Company should thereafter be deemed and considered to exist for the sole purpose of erecting and maintaining a toll bridge under the said charter across the Susquehanna river, at Ouquago, under all its present provisions except the limitation of its duration for thirty years, which limitation was thereby repealed.

"It was then further enacted that for the purpose of erecting and maintaining a toll-bridge across the Chenango river, at or near Chenango Point, (now Binghamton.) the then present stockholders of the Chenango Bridge Company, or such others as should associate for that purpose before the first day of January then next, should be and were created, a body corporate by the name and style of the 'Chenango Bridge Company,' and as such have *perpetual succession* '*under all the provisions, regulations, restrictions, clauses and provisions of the before mentioned Chenango Bridge Company.*'

"Under this charter the plaintiffs erected their bridge in 1808, over and across the Chenango river, about eighty rods above Chenango Point, the confluence of the Chenango with the Susquehanna river, and have ever since continued to enjoy the full benefits of their charter without competition, within the distance of two miles of their bridge, until the defendants, under an act of the legislature

passed April 5th, 1855, (session laws, 1855, 244,) incorporated the defendants, who soon after, under their charter, constructed a bridge across the Chenango river, about eighty rods above the plaintiffs' bridge, and thereby greatly
75 diminished the tolls which the plaintiffs would otherwise have received.

It also appeared upon the hearing that in 1805 there were but three or four houses at Chenango Point, (now Binghamton,) and that in 1808, when the plaintiffs' bridge was erected, there was only some fifteen or twenty houses at that point, and that the country about was thinly populated. That the village now contains a population of between nine and ten thousand; that about seven thousand of that number reside upon the east and one thousand five hundred upon the west side of the Chenango river. That the Chenango river terminated by emptying into the Susquehanna river at Chenango Point, about eighty rods below the plaintiffs' bridge. That on the east side of the river there are two railroad depots, about eighty rods from the defendants' bridge, and double that distance from the plaintiffs' bridge. That the plaintiffs' bridge has yielded about sixteen per cent. upon $10,000 for the last thirty years. Upon these facts the plaintiffs demand judgment that the defendants be perpetually enjoined from using or allowing their bridge to be used, and that they pay the plaintiffs the damages sustained by them by reason of the premises."

Conclusions of law.

The Court decided that the aforesaid facts, as well as the facts admitted by the pleadings, that the plaintiffs were not entitled to the judgment demanded in their complaint, or to any judgment whatever, and directed that the plaintiffs' complaint be dismissed with costs, as will appear by his conclusion of law following:

"This controversy gives rise to several questions. The first, in its order, is as to the duration of the plaintiffs' charter.

"The defendants' counsel insist that it was by the original charter (session laws, 1805, 411, 443) limited to thirty years, and that the act amending it (session laws 1808, 126, 127, and 128) has not extended the time.

Giving to the language employed, as well in the original as in the amended act, its ordinary effect, without reference to its significance derived from that used in the other charters granted by the same act, there is no difficulty in solving the question. The original act incorporated four distinct com-
76 panies; a brief reference to the order in which they were incorporated, the language employed in giving duration to each, will, instead of detracting any thing from the ordinary import of the language employed in giving duration to the plaintiff' charter, add significance to it, and if possible render its interpretation more easy. The first company incorporated was the Newburg Turnpike Company, (session laws, 1805, 412.) The second, the Newburgh turnpike Company, (id., 430.) Each of these were given *continual* succession until the respective companies should be reimbursed for their expenses and ten per cent. interest, when the legislature might dissolve them and thereupon vest in the State all right and interest in these corporations. (Session laws, 1805, 426, 431, and 432.) The act then recited the necessity of bridges over and across the streams crossed by the turnpike roads, and that the expense of erecting and maintaining them, which forbid the policy incorporated in the turnpike charters that the property in them should revert to the State whenever those who constructed them were reimbursed the expenses and ten per cent. interest, and then proceeded to incorporate the Delaware Bridge Company, giving it *continual* succession (id., 434) for the thirty years from the passage of the act, (id., 443,) and in the within time excluded all competition for tolls, either by bridges or ferries, across either branch of the Delaware river, within two miles above or below the bridges to be erected under that charter.

"When all these companies were incorporated, and their rights and liabilities fixed and terminated, the legislature proceeded to incorporate the Susquehanna Bridge Company, and instead of granting them *continual* succession, as they had the antecedent companies, or giving them a monopoly of bridging the Chenango river (as I shall hereafter show) two miles above and two miles below the bridge to be erected by them, as they had to the Delaware Bridge Company upon the Delaware river, created them a body corporate for the purpose of erecting a bridge *at or near* Chenango Point and gave them, their successors and assigns, *perpetual* succession, investing them with all and singular the powers, privileges, rights and advantages, and subject to all the *restraints* contained in the incorporation of the Delaware Bridge Company, not inconsistent with the particular provisions in the act incorporating the Susquehanna Bridge Company, (id., 444.) It was insisted upon the argument, that because in this char-
77 ter the company were made subject to the restraints of the Delaware Bridge Company, their duration was necessarily limited to thirty years.

To this proposition the answer is, that such restraint is inconsistent with the particular provisions of the act incorporating that company, just as clearly as a grant forever is with a limited grant for thirty years. But whatever of doubts there may have been in the minds of any one upon this subject they were effectually put at rest by the legislature (session laws, 1808, 127, 128) when the business of the Susquehanna Bridge Company was limited to erecting and maintaining a bridge across the Susquehanna river at Ouquago, under the provisions specified in its charter, except the limitation of its duration of thirty years, and that was expressly repealed; and then the stockholders of that company, and such others as should associate themselves for that purpose, were created a body corporate by the name of 'The Chenango Bridge Company,' and given perpetual succession under all the provisions, regulations, and clauses of the Susquehanna Bridge Company. I am, therefore, free from doubts in any aspect of the case that the Susquehanna Bridge Company were granted perpetual succession, and that the plaintiffs were in the same respect unlimited.

"When the Delaware Bridge Company was incorporated with the right to construct toll-bridges across the east and west branches of the Delaware river, it was made unlawful for any person or persons to erect a bridge or establish a ferry across either of these branches within two miles either above or below either of the bridges the corporation should erect.

"The plaintiffs have assumed, that because the legislature conferred upon the Susquehanna Bridge Company all the powers, rights and advantages of the Delaware Bridge Company, (session laws, 1805, 144,) and subsequently conferred upon the plaintiffs the benefits of all the provisions, regulations, and clauses of the Susquehanna Bridge Company, (session laws, 1805, 128,) that they thereby became entitled to the same monopoly upon the waters which their bridge crossed that the Delaware Bridge Company had upon the east and west branches of the Delaware river, and that no person or corporation could thereafter be invested with the right to build a bridge within two miles of their bridge, either above or below it. Under this assumption they successfully resisted several applications made to the legislature to incorporate another company, and
78 invest it with the power to erect a bridge near the one erected by them. At length the petition of the inhabitants of that vicinity, praying the legislature to authorize the construction of another bridge near the plaintiffs, with the remonstrances thereto, were, by the legislature, in 1854, referred to the attorney general to examine and report whether an act authorizing the construction of a toll-bridge across the Chenango river at Binghamton would interfere with the vested rights of the plaintiffs, and whether the provisions of the bill were constitutional.

"The attorney general gave the subject an elaborate consideration, and arrived at the conclusions, for reasons stated by him at length, (Senate Document 87,

1854,) that the plaintiffs had not a monopoly extending two miles above and two miles below their bridge, but that the erection of another bridge at that place would diminish the plaintiffs' tolls, and thereby impair their private property, and hence, unless the act should provide for just compensation being made to the plaintiffs, it would be in violation to the constitution. No question was propounded to the attorney general, as to whether the act incorporating the plaintiffs prohibited any other party from erecting a bridge over and across the Chenango river within two miles either above or below the plaintiffs' bridge. It was assumed that it did, and upon that assumption, and upon what the attorney general regarded as having been settled by the cases of the Mohawk Bridge Company *vs.* The Utica and Schenectady Railroad Company (6 Paige, 555) The Charles River Bridge Company *vs.* The Warren Bridge Company (11 Peters, 420,) The Oswego Falls Bridge Company *vs.* Fish and others (1 Barb., Chancery Rep., 547,) and Thompson *vs.* The New York and Harlem Railroad Company (3d Sandford, 657,) came to the conclusion against what he asserts to be his own convictions of the law, that the prohibition formed no impediment to the legislation asked for. A deliberate consideration of the report of the attorney general has, upon the authority of the cases referred to by him, brought me to a conclusion that he erred in advising the legislature—

"1st. That the act would be unconstitutional, unless it provide for just compensation being made to the plaintiffs; and

"2d. Upon the assumption that any other party was prohibited, by the act incorporating the plaintiffs, from constructing a bridge over and across the stream over which the plaintiffs' bridge was constructed within two miles above
79 the plaintiffs' bridge, it formed no impediment to the incorporation of another company to erect a bridge within the forbidden distance which would compete with the plaintiffs and impair their income.

"The consideration which the plaintiffs were to receive for the construction of their bridge were tolls from those whose pleasure it should be to pass over it, as well as those whose business or necessities compelled them to patronize it, and they had the right to the aid of the court to secure to them the enjoyment of their franchise as against any party who should, without authority of law, erect another bridge for the purpose of creating a competition injurious to theirs. (Newburg and and Cochecton Turnpike Company *vs.* Miller and others, Johnson's Chancery Rep., 101.) To all such lawless intruders the plaintiffs might say, and the law would sustain them, 'You cannot impair my franchise or my ferry;' but when the legislature (who are in that respect the sole judges) are satisfied that public necessities demand it, authorize another bridge to be erected, the time has arrived when 'the good of the individual ought to yield to that of the community.' Upon this principle, so far as it relates to impairing the profits of franchises, our whole system of internal improvements has progressed at every step, impairing to some extent the franchise of some one or more individuals or corporations. This proposition was deliberately considered settled by the Supreme Court of the United States in the Charles River Bridge case, and by the court of chancery, in this State, in the Oswego Falls Bridge case, each of which were referred to by the attorney general. The question, as well as the absolute necessity of such a principle, has since been strongly enforced in the court of appeals, in this State, by Bronson, J., in Radcliff's executors *vs.* The Mayor, &c., of Brooklyn (4 Com., 195, 206 and 207.)

"As to the second proposition stated by the attorney general, I must, for the purpose of considering it in the same aspect he has, assume as he did, that the act incorporating the plaintiffs provided that it should not be lawful for any person or persons to erect any bridge or establish any ferry across the Chenango river within two miles above or below their bridge. Such a provision would, in my judgment, amount to a contract on the part of the State not to make

lawful that which its agents had in their usual legislative form said should
80 not be lawful, (Livingston *vs.* Van Ingen, 9 John., 507, 585, 589; Boston and Lowell Railroad Company *vs.* Salem and Lowell Railroad Company, 2 Gray's Rep., 1; Fletcher *vs.* Peck, 6 Cranch, 109)—assuming that this provision applies to the plaintiffs' charter.

"The case is briefly this: The legislature at that early period, with a first desire to advance the interests of the State, and especially that portion of it which from natural causes was comparatively inaccessible in order to afford facilities for ingress and egress, offered to all such persons as should associate themselves together for that purpose, their heirs and assigns, a charter for the purpose of constructing and maintaining a bridge over and across the Chenango river, at Binghamton, making it lawful for them to erect a gate and demand and receive a certain rate of tolls, and unlawful for any one to erect a bridge or establish a ferry within two miles above or below the bridge to be erected by them; and the proposition thus made was accepted by the plaintiffs or those whom they have succeeded, and the bridge erected and maintained under all the provisions of the charter, as well those that were restrictive as those that were beneficial. I cannot doubt for a moment that a proposition thus made and accepted on the part of the company amounts to a grant on the part of the State of the right to construct a bridge and take tolls, and is an agreement that no one during the existence of their charter shall be permitted to erect a bridge for the purposes for which theirs was erected, or to establish a ferry within two miles above or below their bridge, (Boston and Lowell Railroad Company *vs.* Salem and Lowell Railroad Company, 2 Gray, 1.) A contract is seldom if ever made by the State through its legislative agents, except in the ordinary form of statute laws. They do not employ the language in ordinary use between individuals or corporations, such as promise, agree, or covenant; but in the form of an enactment they declare what shall and what shall not be lawful, instead of promising, or agreeing, or covenanting to do or not to do the same things.

"The provisions rendering it unlawful for any other party to erect a bridge, is claimed to be nothing more than an ordinary enactment, and within the power of any subsequent legislature to repeal. That provision is in the same section with, and followed immediately by, a provision that it should not be lawful forcibly to pass the bridge without having previously paid the
81 toll gatherer, for the use of the corporation thereby established; for crossing the bridge, under the penalty of ten dollars, to be recovered by the corporation for their use, with costs. I doubt whether the power to repeal that portion of the section that renders it unlawful forcibly to pass the bridge without paying toll, or incurring the forfeiture, can find an advocate among the profession, unless it is that portion of them who hold that the legislature cannot pass a law amounting to a contract. Whatever might have been the propriety of such a rule, when legislation first began, it is too late to assert it now, as is shown by the authorities already cited. The right secured by the provision being essential to the full enjoyment of the franchise became a part of it, and so with the right secured by the provision against its being lawful for any party to erect a bridge within the stated distance of the plaintiffs' bridge, so as to divert the travel and diminish their tolls.

"Much stress was laid upon the doctrine that public grants are to be construed strictly, and that nothing passes in such grants by implication, nor unless it appears by plain words that it was intended to be done. That such is the rule of construction in such cases cannot be questioned, nor can it be questioned that language not ambiguous is in all cases where the language alone is relied upon to be construed according to its ordinary import. The cases establishing the doctrine contended for are in harmony with this rule. The case

of the proprietors of Stonebridge Canal *vs.* Wheeley and others, 2d Barn. and Adolph., 792, cited by the authorities that have established the rule in this country, is a case where Parliament authorized the construction of a canal giving all persons liberty to navigate it with boats upon payment of tolls to its proprietors for every ton that should pass through any of its locks. Boats passed upon one of the levels but not through any of its locks, and it was held in that case that the proprietors were not entitled to tolls for the reason that the boats did not pass through any lock. Lord Tenterdon said that 'the canal having been made under the provision of an act of Parliament, the rights of the company are derived entirely from that act. This, like many other cases, *is a bargain* between a company of adventurers and the public, the terms of which are expressed in the statute; and the rule of construction in such cases is now fully established to be this: that any ambiguity *in the terms of the contract* must operate against the adventurers and in favor of the public;' and that the plaintiffs' could claim nothing which was not clearly given them by the act. I have referred to and quoted from the opinion in this case for the purpose
82 of showing that without the aid of implication quite remote no recovery could have been had. This case does not, and I venture to say one cannot be found where the language is not ambiguous which holds that the language of a bargain between a corporation and the public is to be interpreted according to its known and obvious meaning.

In interpreting ancient statutes we should go back to the period of their passage, and recall to mind the circumstances that contributed to their adoption, instead of being influenced by the change which half a century has produced in the circumstances and opinions of the public; what would be regarded both prudent and wise legislation then, might be regarded not only unwise but oppressive now. The country traversed by the rivers, over and across which these bridges were authorized, was then sparsely populated and of but little value. Strong inducements were indispensable to such enterprises as building turnpike roads and bridges. To accomplish their construction some companies were given limited charters with a monopoly for miles each way, and others were given perpetual charters. The consequence was that the country was improved and the public not only benefitted and satisfied, until the unparalleled increase of population and improvement has proven in some instances not that the legislature did not intend what their language imported, but that they with all others have to a greater or less degree been mistaken as to what would be a fair equivalent for the enterprises they encouraged. If, as soon as the Delaware bridges were completed and ready for public use, an act had been passed authorizing the construction of other bridges within two miles of them, and the question had then been presented for adjudication before the public necessities once satisfied had changed and increased, there cannot be a doubt but what the interpretation of the provision now under consideration would have been that it constituted a part of the bargain. If it was a part of the bargain then it remains a part of it so long as the bridge they were authorized to construct afforded ample means at that point for public travel of the character and description then contemplated. What if a company of adventurers make a bargain with the public, without unfairness, by which they make a large and unexpected profit, and many individuals are put to some inconvenience, the legislature have not the right to
83 relieve the public from its obligation; the constitution is in the way.—(Constitution U. S., art. 1, § 10.)

"An opposite doctrine was strongly pressed by the counsel for the defendants, based upon the authority of cases that induced the attorney general to yield his own convictions of the law and consider such legislation entirely competent. I will briefly refer to the cases cited in the order in which they were decided, and show that the question here presented did not necessarily arise in any one of them, and that whenever the question was alluded to, except

in the case of Thompson *vs.* The Harlem Railroad Company, (3d Sandford, Chancery Rep., 625, 659,) the doctrine contended for by the plaintiffs was conceded, and in one of them distinctly enunciated. The first case in its order is that of The Mohawk Bridge Company (6 Paige, 554;) in the charter to that company it was made unlawful for any one to establish a ferry within one mile of their bridge; and the chancellor held that the company were protected in the enjoyment of an exclusive right to carry passengers across the river, to a certain extent, by the prohibition against the establishment of a ferry; but it did not deprive the legislature from authorizing another bridge within the prescribed limits whenever the public good should seem to require it, (id. 564,) and why? for the obvious reason that a bridge was not expressly prohibited, adopting the rule more clearly stated in subsequent cases, that prohibitions were not to be implied in grants by the public. The next case was that of the Charles River Bridge Company, (11 Peters, 420.) All that case decides is, that when a grant to a bridge corporation does not in terms exclude the right to grant another franchise which may impair the benefits derived from the first, the legislature are not estopped from granting the second, for the reason that in grants by the public a prohibition against the right to grant a similar franchise, although injurious to one already granted, is not to be implied. In that case the principle asserted by the plaintiffs here was conceded. Chief Justice Taney lays stress upon the fact, 'no exclusive privilege was given over the waters of Charles river above or below the bridge,' no right to erect another bridge themselves, nor to prevent other persons from erecting one, 'no engagement from the State that another shall not be erected,' (id. 548.) The next is the case of the Oswego Falls Bridge Company, (1 Barb., Ch'y R., 547.) Nothing was decided in that
84 case except that a grant to erect a bridge across the Oswego river, at Oswego Falls, did not prevent the legislature from authorizing the erection of another bridge over and across the same river, so near the first as to create an injurious competition to it, and that was decided upon the authority of the case last referred to. The Chancellor in deciding it, refers to the case of the Mohawk Bridge Company, and reiterates the principle decided by it. In referring to the case, he said: 'I then came to the conclusion that the grant to a corporation to erect a toll-bridge across a river, *without any restriction of the power of the legislature to grant a similar privilege to others,* would not deprive a future legislature of the power to authorize the erection of another bridge, which would divert a portion of the travel from the bridge which had been previously erected,' (id. 549.) And it was the misapprehension of the facts in that case that involved the attorney general in error. He said its charter was granted in 1816, and referred to the page in the session laws of that year where it was to be found, and stated that the act of incorporation 'declared that it should not be lawful for any person or persons to erect a bridge or establish a ferry across said river within two miles above or two miles below where the said bridge shall be erected.' Such a provision is contained in the act incorporating the Oswego Bridge Company, (session laws, 1816, 208, § 15.) That is the act to which the attorney general referred. The Oswego Falls Bridge Company was not incorporated until 1824, (session laws, 1824, 351,) and is without any provision rendering it unlawful for any one or more persons to construct a bridge within any distance of the one authorized by that act. The case, therefore, which induced him to yield the opinion he had previously entertained, does not touch the question. The only remaining case arising in this State is that of Thompson *vs.* The New York and Harlem railroad, (3d Sandford, Ch'y Rep., 625.) In that case the plaintiffs were the owners of a toll-bridge across Harlem river from Harlem to Morrisania under a charter granted, in 1790, for 60 years, in which it was enacted that it should not be lawful for any person or persons to erect any other bridge across Harlem river from Morrisania to Harlem. In 1838 the legislature incorporated the defendants' company, conferring upon them power to erect a railroad bridge from

Harlem to Morrisania, and the question was as to the right of the legislature to confer that power; and the vice chancellor, upon the authority of
85 The Charles River Bridge case and The Stourbridge Canal case, held, very properly, against any implication of an exclusive right when the charter is silent on the subject, and upon the authority of the decisions of the Chancellor in the cases of the Mohawk Bridge Company and The Oswego Falls Bridge Company, that the restriction in the act of 1790, authorizing the erection of the toll-bridge from Harlem to Morrisania, did not restrict the power of the legislature to charter a new toll-bridge, or authorize a free bridge in competition with the one authorized and erected under that act. I have already shown that the question did not arise in either of those cases, and that the Chancellor, in the case of the Mohawk Bridge Company, held an opposite doctrine under a statute, as will be seen by reference to it, identical in its language in relation to a ferry, and that the principle there stated is substantially reiterated by him in the Oswego bridge case.

"The vice chancellor relied mainly upon the ground that the legislature in the act of 1790 did not say *they would not permit* another bridge to be erected, and therefore he regarded the prohibition as not express but implied. I am unable to perceive the difference in effect between the words, it shall not be lawful, shall not permit, or shall not be authorized. Place these words in a covenant, and either would be alike broken by permitting that which the contract had provided should not be lawful, or should not be permitted or authorized. A plainer proposition cannot be stated than that a covenant that it shall not be lawful is broken by an act making it lawful. It may be said that the words 'it shall not be lawful,' is in the ordinary language of legislative enactments, and characterizes it as a law merely instead of a contract. I have searched the session laws of this State with a good degree of diligence, and have not been able to find among the several acts incorporating turnpike road or bridge companies an authority to establish a ferry in which they are not given and guarded in the ordinary legislative mode of authorizing or prohibiting acts to be done, where language such as 'it may or shall be lawful to construct a turnpike road or bridge, erect gates, receive tolls, and that it shall not be lawful to forcibly pass a gate without paying toll.' If such rights, conferred in acts of incorporation, are not to be regarded as grants, and the provisions that it shall or shall not be lawful, are not to be regarded in the nature of covenants, then every gate upon every turnpike road or
86 bridge may, as soon as the road or bridge is completed and the gate erected be declared a nuisance, and the law against forcibly passing it repealed. Such a construction is not only opposed to justice but to common sense, and subversive of rights that have been conceded and acquiesced in for more than half a century. (Cayuga Bridge Company *vs.* Magee, 6 Wend., 85; The Mohawk Bridge Company *vs.* The Utica and Syracuse Railroad Company, 6 Paige, 554, 564,.) Whenever the legislature have not intended to part with their power to modify or repeal acts, or portions of acts, they have reserved that power in express terms.

"It should be borne in mind that the question now under consideration, did not necessarily arise either in the Mohawk or the Harlem Bridge case. The question in each of these cases was as to the right to erect railroad bridges. Road bridges were never designed for use by railroad companies. Their engines and cars could not pass over them; for such purposes they would be entirely useless. Railroads, as the chancellor truthfully said in the Mohawk Bridge case, were entirely unknown at the time the grant to that bridge company was made. Viewing these early bridge charters by the light of circumstances existing and taken into consideration when they were granted, and interpreting them according to the views of those who passed them, it is easy to perceive that railroad bridges would not fall within the description of bridges they contemplated,

and hence are not within the provisions of the acts prohibiting competing road bridges; if constructed as they should be, exclusively for railroad purposes, they would be as worthless for other uses as ordinary bridges are for railroad purposes.

"The questions thus far considered are not, in the view I take of the case, necessary to its decision, and for that reason I am not without some doubts as to the propriety of passing my judgment upon them. When a cause turns upon a given question, it is better to pass upon that alone, and frequently hurtful to pass upon any not absolutely essential to its decision; but inasmuch as these questions are of intrinsic importance, and were regarded by the counsel for the respective parties as necessarily involved and of vital importance in the disposition of the cause, I have, contrary to what I regard the safest general rule, considered and passed upon them.

"The only remaining question is, whether the provisions in the char-
87 ter of the Delaware Bridge Company, which declares, 'that it shall not be lawful for any person or persons to erect a bridge or establish a ferry *across the west and east branches of the Delaware river* within two miles either above or below the bridges to be erected and maintained in pursuance' of that act is made applicable to the stream over and across which plaintiffs' bridge is erected. The Susquehanna Bridge Company, as has been stated, was incorporated by the same act under which the Delaware Bridge Company was chartered, and all the powers, rights, and advantages of the Delaware charter was granted to it. The plaintiffs were afterwards incorporated under all the provisions, regulations, and clauses of the Susquehanna Bridge Company.

"Conceding that the plaintiffs, by their charter, were invested with all the rights and advantages of the Delaware Bridge Company, they had by their charter, if it was an advantage to them, a right to prevent any one from erecting a bridge across either of the branches of that river, but as they had not by their charter a right to any of the emoluments of the Delaware bridge, they had no advantages to be derived from that prohibition. If the Delaware Bridge Company had rights and advantages granted to them which could not be of use to the Chenango company, those were not the advantages contemplated by the act, but such advantages only as could be of benefit to them, such as the right to erect a gate, take tolls, and recover penalties for forcibly passing their gate. Their charter is silent as to the right of others to bridge the Chenango river, and if a prohibition in their favor against others exists, it is by implication only. In the Charles River Bridge case, Taney, C. J., said 'when a corporation alleges that a State has surrendered, for seventy years, (in this case forever,) its powers of improvement and public accommodation on a great and important line of travel, along which a vast number of its citizens daily pass, the community have the right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State does not appear.' It cannot be material, so far as the principle is concerned, whether or not the line of travel is of extraordinary importance. It is sufficient that the legislature are satisfied that further public accommodations are necessary, and grant the right to them, and they, as well as those upon whom such rights are conferred, may safely repose themselves upon the well-settled doctrine that in the sur-
88 render of a State's sovereignty by prior acts nothing has passed from the public by implication.

"I am warranted in holding, not only from what the legislature have done, but from other evidence in the cause, that public convenience has been promoted by authority to construct a second bridge. It is a maxim that at an argument drawn from inconvenience is forcible in law, and upon it an ancient rule of logic, by which statutes were interpreted where public convenience would be advanced by it, was 'unless it was very clear that violence would be done to the language by adopting another construction, any great inconvenience which might result from that suggested may certainly afford fair ground for supposing that

it could not be what was contemplated by the legislature, and will warrant the court in looking for some other interpretation.' (Broom's Leg. Max., 77, 78.)

"I am not disposed to adopt this rule so far as it may seem to justify a construction opposed to that contemplated by the law-making power; but when the public will suffer inconvenience by the surrender of any portion of its powers, it must be regarded as the settled doctrine that any ambiguity in the terms of such surrender must operate against those claiming under it, (Stourbridge canal *vs.* Wheeley and others, 2 Barn. and Adolph., 792,) and that in contracts with the public nothing is derived from the public by implication.

"The most that can be said by the plaintiffs is that the grant to them of all the rights and advantages of the Delaware Bridge Company, instead of conferring upon them the right to prohibit other bridges from being built across the Delaware river within the distance specified, implied the right to prohibit others to bridge the Chenango within the same distance of their bridge.

"But concede to the plaintiffs the same interpretation of their contract and the benefits of all implications and inferences to which individuals as between each other would be entitled, and yet a just interpretation of it will not uphold their claim. Their charter authorized the construction of a bridge *at or near Chenango Point.* That point is the termination of the Chenango river; giving them the same monopoly of the waters above and below that point which was granted to the Delaware Bridge Company on the east and west branches of the Delaware river, and it would extend from Chenango Point two miles down the Susquehanna and two miles up the Chenango.

89 "There is another reason why I think the legislature did not intend to grant them such a monopoly. Their recitals in the act show a design to place the several charters granted by them as near as practicable upon an equal footing as to advantages. They retained the power to terminate the charters of the turnpike companies and invest the people of the State with their corporate property whenever the companies repectively should be reimbursed their expenses and ten per cent. interest. They granted to the Delaware Bridge Company a charter, with a monopoly of the streams for two miles each way for 30 years, and to the plaintiffs a perpetual charter. Why grant the plaintiffs a perpetual charter unless it was to make the period beyond 30 years an equivalent for a monopoly of the stream for four miles during a specified time? and why grant to the plaintiffs a charter forever with a monopoly of the waters two miles each way and limit the Delaware charter with a like monopoly to thirty years? are questions to be solved before the claim of the plaintiffs should be upheld; add to this the consideration I have before suggested that the authority given was to erect a bridge at or near the end of the Chenango river and the fallacy of the plaintiffs' position is made more apparent.

"I am therefore of opinion that the plaintiffs' complaint should be dismissed with costs."

The plaintiffs excepted thereto as follows:

Supreme court.

THE CHENANGO BRIDGE COMPANY
against
THE BINGHAMTON BRIDGE COMPANY.

Exceptions taking by the plaintiffs to the decision of his honor, Justice Gray.

1st. Upon finding of facts.

1st. The justice imperfectly states the act for the incorporation of the Susquehanna Bridge Company. He should have stated, in addition to his finding of facts, that such company was subject to all the duties, restraints, and

90 penalties contained in the incorporation of the Delaware Bridge Company, and that all and singular the provisions, sections, and clauses thereof not inconsistent with the particular provisions herein contained, shall be, and hereby are, fully extended to the president and directors of this incorporation.

2d. The finding of facts incorrectly states that under the act of April 1, 1808, that the said Chenango Bridge Company is created a corporation under the provisions of the before-mentioned Chenango Bridge Company, when, as provided by the act, the same is subject to the provisions of the before-mentioned Susquehanna Bridge Company.

2d. Upon conclusions of law.

1st. The plaintiffs except to that part of the decision which decides that the provisions in the charter of the Delaware Bridge Company, which declares "that it shall not be lawful for any person or persons to erect a bridge or establish a ferry across the west and east branches of the Delaware river within two miles either above or below the bridges to be erected and maintained in pursuance" of that act, is not made applicable to the plaintiffs' bridge or to the stream over and across which the plaintiffs' bridge is erected.

2d. The plaintiffs except to that part of the decision which decides that the defendants have the right to erect and maintain the bridge in question.

3d. The plaintiffs except to that part of the decision which holds that the public convenience has been promoted by the authority to construct a second bridge.

4th. The plaintiffs except to that part of the decision which declares the act authorizing the erection of the defendants' bridge to be valid.

5th. The plaintiffs except to the decision and conclusion of the said justice that the plaintiffs' complaint should be dismissed with costs.

6th. The plaintiffs except to each and every decision and conclusion of said justice involved in the decision of this action in favor of the defendants.

HENRY R. MYGATT,
Plaintiffs' Attorney.

91 Supreme court—Broome county.

THE CHENANGO BRIDGE COMPANY, appellants,
agt.
THE BINGHAMTON BRIDGE COMPANY, respondents.

This cause upon the appeal taken therein, having been duly brought to argument at the general term of this court, and said general term sitting for the 6th judicial district at the court-house, in Cortland county, on the 9th day of November, 1858, having ordered and decided that the judgment entered in this action be in all things affirmed with costs, and the costs upon said appeal being adjusted by the clerk of Broome county at $68\frac{70}{100}$. Now, therefore, on motion of Dickinson & Wright, respondent's attorneys, it is ordered that said judgment be, and the same is hereby in all things affirmed, and that the respondents recover of the plaintiff and the appellants $77, the amount of said former judgment, and $68\frac{70}{100}$, costs of said appeal.

WM. C. DOANE, *Clerk.*

In Supreme Court—County of Broome.

THE CHENANGO BRIDGE COMPANY
agt.
THE BINGHAMTON BRIDGE COMPANY.

Notice of appeal from judgment.

Please to take notice that the plaintiffs, the Chenango Bridge Company, in the above-entitled action, appeal from a judgment entered therein, on the second

day of December, 1858, in favor of the defendents against the plaintiffs, for one hundred and forty-five dollars and seventy cents, to the court of appeals, and each and every part of said judgment.

Dated December 28th, 1858.

Yours, &c.,

HENRY R. MYGATT,
Attorney for Plaintiffs.

To DICKINSON & WRIGHT, Esqs.,
Attorneys for Defendants, and
WILLIAM C. DOANE, Esq.,
Clerk of the County of Broome.

BROOME COUNTY CLERK'S OFFICE, *ss:*

I, William C. Doane, clerk of said county of Broome, hereby certify that I have compared the foregoing with the original judgment roll in the above action, and the notice of appeal therein, on file in this office, and that the same
92 is a correct transcript of and from the said judgment roll and notice of appeal on file in this office, and of the whole of said judgment roll and notice of appeal.

In testimony whereof, I have hereunto set my hand and affixed my official
[L. S.] seal, being the official seal of said county, this the thirtieth day of December, 1858, at Binghamton, in said county.

WM. C. DOANE, *Clerk.*

93 STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol, in the city of Albany, on
[L. S.] the 3d day of July, in the year of our Lord one thousand eight hundred and sixty-three, before the judges of said court.

Witness Hiram Denis, esquire, chief judge.

F. A. TALMADGE, *Clerk.*

THE CHENANGO BRIDGE COMPANY, app'l't,
agt.
THE BINGHAMTON BRIDGE COMPANY, resp't.

Be it remembered that on the 8th day of January, in the year of our Lord one thousand eight hundred and fifty-nine, the Chenango Bridge Company, the appellant in this action, came here into the court of appeals, by Henry R. Mygatt, its attorney and counsel, and filed in the said court its notice of appeal and return thereto from a judgment of the supreme court; and the Binghamton Bridge Company, the respondent in said action, afterwards appeared in said court of appeals, by Dickinson & Wright, its attorneys and counsel.
94 Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, after having heard the action argued by Mr. H. R. Mygatt, counsel for the appellant, and by Mr. D. S. Dickinson, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge that the judgment of the said supreme court, appealed from in this action, be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellant costs of appeal in this court.

In this cause the judgment of the supreme court, at general term, having been affirmed, it is now certified that this is the highest court of law in the State of New York in which the decision of this suit could be had, and that there is

drawn in question, and that the question raised by the appellants was, that the act of the legislature of the State of New York, entitled "An act to incorporate the Binghamton Bridge Company," passed April 5th, 1855, was void, as being in violation of a contract made between the State of New York and the said Chenango Bridge Company, by certain acts of the legislature of said State, which are fully stated and set forth in the case and bill of exceptions, forming a part of the record herein, in so much as said act of April 5th, 1855, authorized the erection of another toll-bridge across the Chenango river, within two miles of the appellants' bridge; and the question raised by the appellants was, that the
95 said act of April 5th, 1855, was repugnant to the Constitution of the United States, and the question decided by this court, in order to induce the judgment of this court, was, that the said act of April 5th, 1855, was not repugnant to the Constitution of the United States, and that said act of April 5th, 1855, is held valid and binding by this court, notwithstanding said act was drawn in question in this cause, and the question clearly raised therein that said act was void as aforesaid.

It was also ordered that the record and proceedings be remitted to the Supreme Court, there to be proceeded upon according to law. Therefore, it is considered that the said judgment be in all things affirmed with costs, as aforesaid, and stand in full force, strength, and effect.

And hereupon as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the said supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

COR'S TEN BROOK, *D'y Clerk.*

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 9th, 1863.

96 I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached.

COR'S TEN BROOK, *Dep. Clerk.*

In the Court of Appeals.

THE CHENANGO BRIDGE COMPANY, app'l't, *agt.*
THE BINGHAMTON BRIDGE COMPANY, resp'd't.

Whereas this cause was duly brought to argument in the said court of appeals, upon an appeal from the judgment entered therein in the supreme court, on the 2d day of December, 1858, and said court having ordered that said judgment be affirmed, with costs to the respondents; and the costs upon said appeal being duly adjusted by the clerk of Broome county, at $271 17, and said former judgment, with interest thereon, being the sum of $195 02, and the same being remitted for entering and perfecting said judgment:

Now, therefore, on motion of Dickinson and Wright, resp'd'ts' att'ys, it is ordered that judgment be, and the same is hereby entered, in all things affirming said former judgment of December 2, 1858, and that defendants, the
97 respondents, received of plaintiff, the appellant, 195\frac{02}{100}$, the amount of said former judgment, with interest, and $271 17, cost of appeal as aforesaid; making together the sum of $466 19, for which execution may issue.

Dated Binghamton, Sept. 29, 1863.

C. O. ROOT,
Clerk of Broome county.

98 Know all men by these presents, that we, Sherman D. Phelps and John Clapp, of Binghamton, in the county of Broome, and State of New York, are held and firmly bound unto the Binghamton Bridge Company in the sum of nine hundred dollars, lawful money of the United States of America, to be paid to the said the Binghamton Bridge Company or its assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents. Sealed with our seals; dated the fourteenth day of October, one thousand eight hundred and sixty-three.

Whereas, lately, in the supreme court of the State of New York, said supreme court being possessed of the record and proceedings upon a remittitur from the court of appeals of the State of New York, in a suit depending in said court between "the Chenango Bridge Company," plaintiffs, and the said "the Binghamton Bridge Company," defendants, wherein judgment was rendered against the said "the Chenango Bridge Company," and docketed October 9, 1863, for four hundred and sixty-six dollars and nineteen cents; and the said "the Chenango Bridge Company" being about to obtain a writ of error, and file a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and the citation to be directed to the said Binghamton Bridge Company, citing and admonishing the said "The Binghamton Bridge Company" to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next: Now the condition of the above obligation is such, that the above-named the Chenango Bridge Company

99 shall prosecute the said writ of error to effect, and shall answer all damages and costs, and pay the said judgment, if the said "the Chenango Bridge Company" shall fail to make good its plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

SHERMAN D. PHELPS. [L. S.]
JOHN CLAPP. [L. S.]

Executed and delivered in presence of—
GEO. PRATT.

STATE OF NEW YORK, *County of Broome, ss:*

On this 14th day of October, in the year 1863, before me personally came Sherman D. Phelps and John Clapp, to me known to be the same persons described in, and who executed the above obligation, and severally acknowledged that they executed the same.

GEO. PRATT,
Notary Public, in and for Broome Co., New York.

County of Broome.

Sherman D. Phelps and John Clapp, being duly sworn, severally say, each for himself:

1. That he is a resident and householder in this State.
2. That he is worth eighteen hundred dollars over all his debts and liabilities, and exclusive of property exempt from execution.

JOHN CLAPP.
SHERMAN D. PHELPS.

Sworn to before me this October 14, 1863.

GEO. PRATT,
Notary Public, in and for Broome Co., New York.

100 I approve of the within bond.

S. NELSON,
Justice Supreme Court.

Dated 28th day of October, 1863.

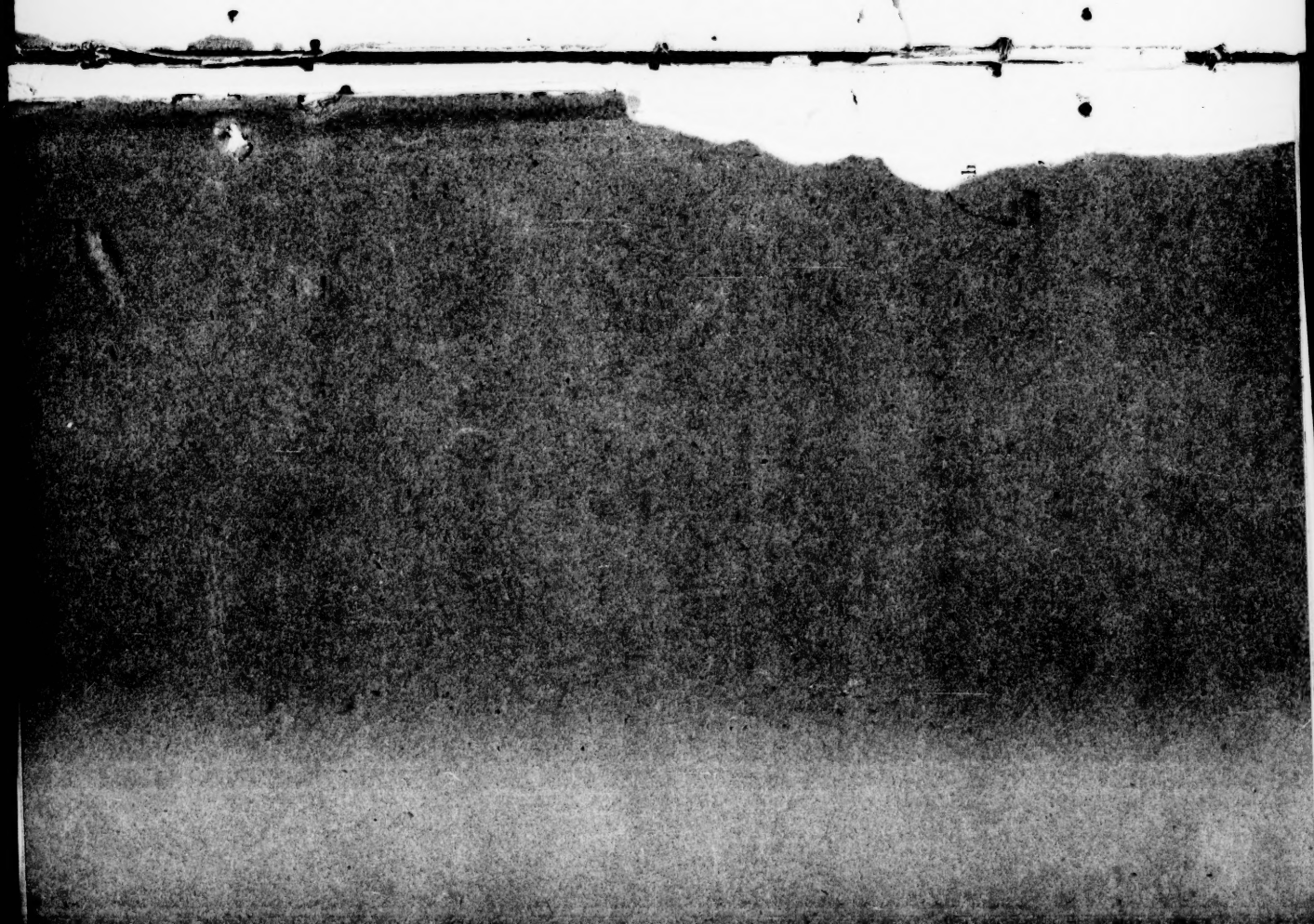
101 STATE OF NEW YORK, SUPREME COURT,
Broome County, Clerk's Office, ss:

I, Charles O. Root, clerk of the supreme court of the State of New York, do hereby certify and return that the annexed is the original writ of error deposited with me in the office of the court, where the record of the judgment therein mentioned remains, and the citation with the service endorsed thereon, and a copy of the original bond, and a true copy of the record of judgment therein; and that I have compared the foregoing with the original judgment record in this action and the bond filed in this office, and that the same is a correct transcript of and from the judgment record in said writ of error mentioned, and of said bond on file in this office, and of the whole of said judgment record and bond.

In testimony whereof I have hereunto set my hand and affixed my official seal, being the official seal of said supreme court, at Bing-
[SEAL.] hamton, in the said county of Broome, this, the 17th day of November, in the year of our Lord, 1863.

C. O. ROOT, *Clerk.*

Filed 25th November, 1863.



Supreme Court of the U. S.

THE CHENANGO BRIDGE COMPANY,
Plaintiffs in Error,
vs.
THE BINGHAMTON BRIDGE COMPANY,
Defendants in Error. 1

Abstract of Case with Points of Plaintiffs in Error.

ABSTRACT OF CASE.

The Judiciary act, (§25,) provides that a final judgment or decree in the highest court of law or equity in a State, "where *is drawn in question the validity of a Statute of———any State on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of such validity*, may be examined and reviewed in this Court," and the Constitution of the United States provides that "no State shall pass any ———law impairing the obligation of contracts." 2

With these provisions in force, the State of New York passed April 6, 1805, (18, 31, 32,) an act entitled "an act to establish a turnpike corporation for improving and

3 making a road from the village of Oxford, in the county of Chenango to intersect the Newburgh and Cochecton turnpike road and for other purposes."

This last named act creates five corporations, among which were two bridge companies, viz.: the Delaware Bridge Company to erect and maintain toll bridges across the East and West branches of the Delaware river; (32), and the other the Susquehanna Bridge Company to erect and maintain a toll bridge across the Susquehanna river at Ouquago; (38), and another bridge across the Chenango river, at or near Chenango Point, (now Binghamton.) (38)

After providing for the organization of the Newburgh
4 and Chenango turnpike company, and directing the manner of constructing the contemplated turnpike road and intersecting road, in twenty-two sections, it contains a recital as in the beginning of a new act, as follows: "Whereas the foregoing incorporation cannot be sufficiently carried into effect, or the public convenience fully promoted, if durable and permanent bridges acrosss the Susquehanna and Chenango rivers, and the East and West branches of the Delaware river, at the several places of intersection of the said roads, are not at the same time erected and maintained; and whereas, it is suggested that it will be expedient, for the purpose aforesaid, to make two separate and distinct bridge incorporations, with powers adequute to the accomplish-
5 ment thereof in the best and most suitable manner; therefore, (Section 23), be it enacted that Richard B. Clark and all others as should associate for the purpose of constructing a bridge over and across the east and west branches of the Delaware river, be a body corporate and politic, by the name of the President and Directors of the Delaware Bridge Company. The act then in the fourteen following sections, provided for the organization, and management of such corporation, and defined its powers and rights and declared its duties and obligations. Section 31 declares "*that it shall not be lawful for any person or persons to erect any bridge or bridges,——within two miles either above or below the bridge to be erect-*

ed and maintained in pursuance of this act." Section 38 6
then, "for the purpose of erecting and maintaining a good and sufficient toll-bridge on and across the Chenango river at or near Chenango Point," provides for the organization of a corporation by the name of the "Susquehanna Bridge Company," which should have perpetual succession, and be and were thereby invested with " all and singular the powers, rights, privileges, immunities and advantages, and be subject to all the duties, regulations, restraints and penalties which are contained in the foregoing incorporation of the Delaware Bridge Company." And the section further declares, that " all and singular the provisions, sections and clauses thereof, not inconsistent with the particular provisions herein contained, shall be and hereby are fully extended to the President and Di- 7
rectors of this corporation."

On the 1st April, 1808, (42) the limitation of the duration of said Sususquehanna Bridge Company to thirty years, was repealed (43), and the Chenango Bridge compay was created with perpetual succession, and thereby the plaintiffs were vested with " all the provisions, regulations, restrictions, clauses and provisions of the before mentioned Susquehanna Bridge company," (43.)

The act of 1808 divides the Susquehanna into two companies, one of which is to retain the name of the Susquehanna Bridge Company, and to be limited to erecting and maintaining the bridge across the Sus- 8
quehanna river under all the provisions of the charter given to that company by the act of 1805, except the said limitation of its duration for thirty years, (which limitation was expressly repealed,) and by the next section of the act, the other company which is the plaintiffs in error was to be called " the Chenango Bridge Company," and to have for its object the erection and maintaining their bridge over the Chenango river.

After giving the Susquehanna Bridge company an unlimited charter and all the faculities and incidents which it had under the act of 1805, it incorporates the Chenango Bridge Company and endows it with the same precise rights, faculties and incidents.

9 On the faith of said act the plaintiffs' in errors' bridge at Binghamton was built, and has ever since been maintained, and the right to all the tolls incident to crossing the river for two miles, have always been claimed.

In 1826 the Legislature was petitioned (44), for the the erection of a new bridge across the Chenango river at the village of Binghamton, which by the resolution of the committee on roads and bridges, was referred to the committee on courts of justice, (46). That committee investigated the subject and inquired into the rights of the plaintiffs, and were unanimously of the opinion that the plaintiffs were vested with all the rights, privileges and immunities of the Delaware Bridge Compauy, and
10 that one of the rights and privileges granted to the Delaware Bridge Company was, that no bridge or ferry should be established within two miles of the bridges authorised to be erected (47). The committee were of the opinion that to authorize a new bridge at Chenango Point (Binghamton,) would interfere with the plaintiffs' vested rights.

The House agreed with the committee in their report, (48.)

In 1854, petitions for a new bridge over the Chenango river at Binghamton, were presented to the Legislature, (52,) and the committee on roads and bridges reported a bill (48), which was referred to the committee
11 on the Judiciary, (49,) and the same referred by the House to the Attorney General, (49). The Attorney General, (the Hon. Ogden Hoffman), reported that the plaintiffs' rights would be interfered with, and that the proposed bill would be in violation of both the Constitution of the State of New York, and of the United States, (51, 64).

The committee recommended the "rejection of the bill on the ground that it was unconstitutional." (Assembly Journal 1845, page 856.) The proposed bill did not pass.

In 1855, an act passed the Legislature, (70, 71,) incorporating the defendants in error, and authorizing the erection by them of a bridge over the Chenango

river in the village of Binghamton, not less than eighty 12
rods above the plaintiffs' bridge, and south of the New York & Erie railroad bridge, [70]. The defendants have constructed their bridge under said act, and that against the repeated protests of the plaintiffs. The defendants in error claim that the said act gives them full power to construct said bridge and collect tolls, [9, 10].

The Chenango Bridge Company hereupon brought their action against the Binghamton Bridge Company, for the purpose of perpetually restraining the Binghamton Bridge Company from violating the plaintiffs franchise by the erection and use of their new bridge on the Chenango river, and for an accounting in damages for the loss of tolls occurred to the plaintiffs thereby, [6, 8]. 13

The complaint referred to the acts of incorporation and stated that it was particularly specified and agreed in said acts, that it should not be lawful for any person or persons, to establish any bridge above or below the bridge of the plaintiffs.

It then proceeded to insist thus: "that no power to alter, modify or repeal said charter was in any manner reserved therein, but that the same was an absolute, unconditional and unlimited contract with the plaintiffs. That in pursuance thereof, and about the year 1808, the plaintiffs performed their part thereof by the erection of a bridge in conformity thereto; that they have since been compelled twice to rebuild it at great expense; that 14
they have in good faith kept up and maintained the same until the present time, and have at all times claimed and acted upon the privileges so granted them as aforesaid."

It further insisted, "That upon the faith of the legislature, thus commenced and continued, all the stockholders of the plaintiffs have purchased their stock; that a large majority of them have become the owners thereof since 1845; that by reason of the several declarations by successive legislatures that the contract with them was inviolable, and that they did not claim any right to interfere therewith; said stockholders have purchased their stock at greatly increased prices, and have paid

15 therefor much more than they would otherwise have done; and they insist that by reason thereof, if any doubts had previously existed as to the inviolability of their charter, that the same would have been removed, and that the legislature was thenceforward estoped from any interference therewith."

It also insisted that the act of the legislature authorizing the construction of the defendant's bridge was "in violation of the contract of the State with the plaintiffs, and is unconstitutional and void." (8)

The case was first tried at a special term of the Supreme court, when that court determined the case
16 against the plaintiffs on the sole ground, that there was no prohibition contained in the legislative enactments, which constitute the plaintiffs charter, against the erection of other bridges over the same stream, and in the vicinity of their bridge.

But that court at special term and on appeal at the general term was of the opinion, "that if the restriction contained in the charter of the Delaware Bridge company had been incorporated into the plaintiffs' charter, it would have constituted a contract between the State and the corporators which would have been within the protection of the provisions of the Constitution of the United States, which forbids the passage of any law by
17 a State impairing the obligation of contracts; and the learned Justice, who determined the case at the special term, has an extended statement of the reasons for that opinion, in which the general term substantially concurred."

On appeal from the general term of the Supreme court to the Court of Appeals, upon the first argument in 1862, upon bringing the case to a decision the court were equally divided. Judge Denio stated that it was the most important case that had come before the court that year. (26 Howard's Practice Reports, 125.) Upon the reargument in 1863, five new judges taking the place of five of the judges of the previous year, the judgment was affirmed by a decision of five to three judges."

The Court of Appeals being the highest court of law 18
in the State of New York, in which the decision could be had, certified that the questions raised by the appellants, [plaintiffs in error,] was that the act of the Legislature of the State of New York, entitled "An act to incorporate the Binghamton Bridge Company," passed April 5th, 1855, was void, as being in violation of a contract made between the State of New York and the said Chenango Bridge Company by certain acts of the legislature of said State, which are fully stated and set forth in the case and bill of exceptions, forming a part of the record herein, in so much as said act of April 5th, 1855, authorized the erection of another toll-bridge across the Chenango river, within two miles of the appellants' 19
bridge; and the question raised by the appellants (plaintiffs in error,) was that the said act of April 5th, 1855, was repugnant to the Constitution of the United States, and the question decided by this court, in order to induce the judgment of this court, was that the said act of April 5th, 1855, was not repugnant to the Constitution of the United States, and that said act of April 5, 1855, is held valid and binding by this court, notwithstanding said act was drawn in question in this cause, and the question clearly raised therein that said act was void, as aforesaid," [94].

In the Court of Appeals after the final argument, only three of the judges delivered written opinions.

The prevailing and only written opinion for affirmance 20
was by Judge Wright who held:

I. That the prohibition against constructing other bridges within a distance of two miles, is not a part of the charter of the plaintiffs' company, and:

II. That the provisions against constructing bridges within the two miles, was intended as a mere restriction upon *individuals, public officers and authorities and other corporations,* and was not intended to be or constitute *any restriction* upon the *sovereign authority of the State,* and does not involve any surrender of the rights on the part of the legislature, to grant in its discretion such

21 *other charters* within the limits prescribed as it may deem required by the public interest, *consequently* that the grant subsequently by the legislature to the defendants, to erect their bridge, does not come within the *prohibition of the Constitution of the United States* which declares that, "no State shall pass any law impairing the obligation of contracts."

Written opinions for a reversal were read by Denio, Chief Judge, and by Judge Emott.

Their conclusions were, that the State through the law-making power, contracted with the bridge company, (plaintiffs' in error,) that if it would build and maintain the bridge in question, the law would not permit
22 any other person to put up a bridge over the stream within two miles either way from such bridge, and that the charter of another company with authority to construct a bridge within that distance, was a plain violation of the bargain, and as it was a contract within the protection of the Constitution of the United States, the second charter was null and void.

26 Howard's Practice Reports, page 297.

Davies and Rosekrans, J., J., concurred on both the grounds stated in the opinion of Judge Wright, and Selden and Marvin, J., J., where for affirmance on the ground that one legislature cannot restrain the power of
23 future legislation.

26 Howard's Practice Reports, at page 152.

The court of appeals therefore were of the opinion, that the restriction against other bridges for two miles, was applicable to the plaintiffs' bridge, but that the legislature were not restrained by the Constitution of the United States, from granting other charters within the prescribed limits.

POINTS.

POINT FIRST.

This is a case for the revisory power of this court over

the courts of the State of New York, under the 25th section of the act of Congress of 1789.

The defendants claim under the act of April 5th, 1855, (70,) of the New York Legislature, a right to build their bridge over the Chenango river, inside the limits prescribed by the acts of 1805 and 1808. The plaintiffs say that to permit this is to violate the contract which they have made with the State of New York, and therefore the act of 1855, so far as it confers such authority on the defendants, is void, by the Constitution of the United States, because it impairs the obligation of a contract. The complaint was dismissed and judgment rendered for the defendants, and the highest court of that State held the act of 1855, which was the only authority on which the defendants base their rights to build any structure over the Chenango river, to be valid.

As said by this court in a recent case "in holding that act to be valid, notwithstanding plaintiff's claim that it was void as impairing the obligation of their contract with the State of (New York,) a decision was made within the very terms of the 25th section of the act of Congress of 1789."

The Bridge Proprietors vs. The Hoboken Company,
1 Wallace's Reports 116.

POINT SECOND.

The plaintiffs' grant by the act of 1805 *as amended in* 1808, *was an exclusive right to maintain a bridge over the Chenango River, and receive tolls which grant excluded all competition within two miles thereof.*

The Legislature in 1805 created, by the same act three corporations to construct turnpike roads through an extended and thinly populated section of the State, and declared that the said "incorporation cannot sufficiently be carried into effect or the public convenience fully promoted, if durable and permanent bridges across the Susquehanna and Chenango Rivers and the East and West branches of the Delaware River, at the sever-

al places of intersection of the said road are not at the same time erected and maintained," (31).

The series of provisions respecting these companies is introduced by a further and very significant *preamble*. It sets forth an urgent public *necessity* for these bridges, by declaring in effect that the motives which led to the incorporation of the turnpike roads, provided for in the same act, cannot be carried into full effect or the public convenience promoted, without the bridges. It then sets out the necessity which is thought to exist, of extending extraordinary encouragement to the enterprise, on account of the great difficulty of the work, its exposure from the size and rapidity of these streams to injury from sudden freshets, and the probability that "a frequent renewal of the whole capital" will be required to secure permanent and durable bridges.

Denio, C. Judge of the Court of Appeals, said, "This recital is introductory of and applies equally to the subsequent provisions respecting each of the bridge companies, and is therefore as applicable, so far as appears, to the bridge over the Chenango, as to either of the others. Its object is to explain the reason for offering the peculiar inducements which are held out to encourage parties to undertake the several enterprises, in order that those who might in future years be called upon to expound the act may understand the motives which led to its enactment. These inducements consist in the rates of toll allowed to be taken, the duration of the charters, and especially, as it seems to all, in the provision for securing the corporators against interference with the franchises granted, by the establishment of ferries or the erection of competing bridges. As these inducements were, so far as the act discloses, equally necessary to promote the erection of each of the bridges, there is no reason, *a priori*, for supposing that the Chenango bridge was not as fully within the intention of the legislature in offering them as either of the other three bridges. We are to look also into the system upon which the several detailed provisions are framed and adjusted to the two corporations, and the scheme was this:

to provide in the outset for the formation of one of the 30
corporations [the Delaware company being chosen], and to attach primarily to that one all the provisions and regulations which it was thought expedient to enact respecting both companies, and then to provide for the incorporation of the other company, and to adapt these provisions and regulations to that corporation by brief words of reference. The act is obviously drawn in conformity to this system."

26 Howard's Practice Reports, 301.

The preamble further recites, that "it will be most expedient for the purposes aforesaid to make two separate and distinct bridge incorporations with powers ade- 31
quate to the accomplishment thereof in the best possible manner," and then incorporates the Delaware Bridge Company, with power to erect two bridges and prohibits any person from erecting any bridge or establishing any ferry within two miles either above or below the said bridges.

The Delaware Bridge Company being thus fully constituted, the Susquehanna company is then provided for in a single section for the purpose of erecting a bridge at Ouquago, and also the plaintiffs' bridge, and "invests them with all and singular the powers, rights, privileges, immunities and advantages," and "subject to all the duties, regulations, restraints and penalties which are con- 32
tained in the foregoing incorporation of the Delaware Bridge Company, and all and singular the provisions, sections and clauses thereof, shall be and hereby are fully extended" to said corporation.

The Section (XXXVIII) incorporating the Susquehanna Bridge Company, then provides for commissioners to open the books of subscription to the stock, and for the rate of tolls, which are to be the same for the bridge over the Chenango river as are provided respecting one of the bridges of the Delaware company, and for the bridge over the Susquehanna one third more; and this is all that is said respecting this company, (38).

Denio, C. Judge further said, "The intention of giv-

ing to the two companies precisely the same faculties, and of making them, as far as possible, exactly similar, in all respects, is very apparent. The draftsmen was assiduous in bringing together a great many words to express that intention, and was apparently fearful that some ingenious criticizer would find grounds to distinguish between them contrary to what he intended. Now as these charters were designed to continue for thirty years, and could not be expected to be immediately profitable, the provision forbidding competition must have been regarded as of great importance. The adventurers must necessarily look to the future for their reimbursement for the outlay which they must immediately incur, but in order to rely upon that resource, they, we may suppose, required a guaranty against other competitors for the profits of the transit across the river, which the increase of population, and the opening of the country to settlements were expected to bring. Such a guaranty was inserted in very explicit language, in the provisions respecting the bridges spanning the Delaware."

26 Howard's Practice Reports, at page 302.

The learned Chief Judge further says, that the Susquehanna Company "is invested with all the *rights, privileges, immunities, and advantages of the Delaware Company*. If the language of the provision respecting that company had been that no person should erect a bridge or establish a ferry within two miles either up stream or down stream from the bridges erected by them, this power of excluding competition would have been a right and a privilege, and moreover an immunity and an advantage, which, beyond all question, would have been annexed to the Susquehanna Company equally with the Delaware Company. But the prohibition is, in terms, against erecting a bridge across either of the branches of the Delaware river within the prescribed distance; and it is *because the streams of water are named*, that it is argued that the prohibition cannot be applied by the words of reference which are used to the bridges over the other streams. It is very true that a

provision incorporated into the Susquehanna charter, 36
that bridges should not be erected over the Delaware river would be idle and absurd. But I am of opinion that the construction contended for by the defendants would be too narrow and literal. It was, I think, the substance of the provisions in the first mentioned charter, as distinguished from the verbal phraseology, which was to be imported by means of the words of reference, into the other. Reasonable consideration should be given to the theory on which the act was framed. The form adopted was resorted to in order to avoid tedious repetition, but great care was taken that no provision relating to the former company should be left out in the other. This is obvious from the further language of the 37
Section, as all the rights, privileges, &c., of the Delaware company were conferred upon the other, the latter, was also charged, as was manifestly just, with all the duties, restraints and penalties which had been enacted respecting the first named company; and for abundant, if not by excessive caution, it was added that all the provisions sections and clauses of the Delaware charter, not inconsistent with the particular provisions contained in the act should be "fully extended" to the Susquehanna company. The substance of the provision against competition was not at all inconsistent with anything contained in the act, but was perfectly homogeneous with the scope and intention. A literal construction which 38
should shut out from the Susquehanna charter all the provisions primarily annexed to the incorporation of the Delaware company, which could not be transplanted in *hæc verba* into the other would quite subvert the intention of the legislature.

The act gives, in quotation marks, the form of subscription paper to the stock; and the promise contained in it is "to pay the sums subscribed to the president and directors of the Delaware Bridge Company." It would of course be absurd to use such a paper for obtaining subsriptions to the stock of the Susquehanna Company. Then the provision for inspection requires the official action of the judges of the court of Common

Pleas of the county of Delaware; and yet it is preposterous to suppose that they were to go out of their own county to inspect the bridges at Chenango Point while there were judges of the same grade in the proper county. So in regard to the directions for publishing notices of the meeting of the stockholders to choose directors. They are adjusted to the locality of the Delaware bridges, and would have to be accommodated to the other locality, or they could not be used."

26 id., at pages 303-5.

On the first of April, 1808, the plaintiffs had not constructed their bridge, and the Legislature on petition of the Turnpike Company, for the purpose of erecting and maintaining the plaintiffs' bridge, created it a body corporate by its present name, and as such to have perpetual succession under "all the provisions, regulations, restrictions, clauses and provisions" of said Susquehanna Bridge Company.

This act of 1808, divided as it were, the corporation into two. Its original capital was $20,000, and it was authorized to erect and maintain two bridges, one over each of the rivers specified. It was, by the act of 1808, restricted under its original name and corporation, to the building and maintaining one of the bridges which were included within the original design, that over the Susquehanna river, and its capital was reduced to $10,000, one half of the original amount. At the same time its stockholders, with any others who might associate with them, were created a new body corporate under the name of the Chenango Bridge Company, with the power and right, exclusive of the present organization, to build and maintain the Chenango Bridge. The remaining $10,000, or one half of the capital originally authorized, was set apart and designated as the capital of the new corporation.

From this simple recital of the sections applicable to the plaintiffs' franchise, it is evident that the proviso prohibiting the erection of any bridge within two miles of the bridges on the Delaware, is a part of the plain-

tiffs' charter, therefore to be taken as an essential con- 42
dition of the contract between the public and these plaintiffs. The plaintiffs, therefore, contend that by the acts under which their bridge has been erected, the defendants were prohibited from building their bridge.

This case requires the construction of a charter. It was said by Black, C. J., "that an act of incorporation is and always must be interpreted by a rule so simple that no man, whether lawyer or layman can misunderstand or misapply it." These plaintiffs claim no powers except those granted in direct and unmistakable plain words.

As said by Emott, J., in the Court of Appeals, "The 43
obvious meaning and the effect of this was to create a new corporation with all the powers, duties and liabilities which attached to that from which it sprang, at the time of its creation, subject only to such modifications or interpretations of those powers as would be incident to the distinct object of the new company. It is contended that this did not confer upon the appellants, (plaintiffs), the powers and privileges which were given to the Susquehanna company by the act of 1808 itself, but only such as belonged to the latter by its original charter, and before the passage of the act which divided the original company into two corporations. But this would be a narrow and an unreasonable construction of 44
the act. The Legislature incorporated the Susquehanna company anew in 1808, changing materially not only the object but the conditions and character of its existence, and it at the same time chartered the Chenango Bridge Company for a purpose which had been included within the design of the original charter of the Susquehanna Company, but was now excluded from its powers. It would not be contended that *both* companies were authorized to bridge the Chenango river, or that the new company had any right to bridge the Susquehanna. The act of 1808 in conferring upon the Chenango Company the same rights as were possessed by the before mentioned Susquehanna Bridge Company, referred to the amended corporation which was the creation or result of

45 the amendment made in the original charter of that company by the act itself. It is the Susquehanna Bridge Company then and there created and referred to in the act itself whose powers and privileges are conferred *mutatus mutandis* upon the Chenango Bridge Company. It does not, therefore admit of any doubt that the Chenango Bridge Company has perpetual succession without the limitation of 30 years, which was originally imposed upon the parent company, but was removed by the act of 1808, and that the Chenango bridge might be built at any time within four years from the passage of this act instead of being required to be completed by the 1st of December, 1809, which was required of the Delaware bridges, and as it is contended if not conced-
46 ed of the Susquehanna bridge in like manner by the act of 1805."

26 Howard's Practice Reports, 312—313.

At page 314, the same Judge remarks, "Whatever, therefore, and all which is contained in the act incorporating the Delaware Bridge Company, which is not inconsistent with or inapplicable to the Susquehanna company is as much a part of the charter of the latter as if it had been expressly enacted in reference to it. One or two considerations growing out of the act of 1808, will make this still plainer if it were necessary. The act of 1808 while it continued the Susquehanna
47 company in existence as a corporation, not only limited its powers and purposes to bridging the Susquehanna river only, but removed the limitation of its existence to 30 years, and gave it perpetual succession. This is an express provision of the act. But the limitation is found not in the 38th section of the act of 1805, which expressly relates to the Susquehanna company, but in that portion of the act relating to the Delaware company and is made a part of the charter of the Susquehanna company solely by the language which I have quoted which inserts into the charter of the one, this provision contained in that of the other. So also the Delaware company were bound to erect their bridges within a certain time. This also was considered by the legislature

to have become a part of the organic law of the Susque- 48
hanna company, since the act of 1808 expressly released the latter from this obligation also, and extended the time within which their bridge was to be constructed. It should be observed also with reference to this latter provision that in the original charter of the Delaware company it is coupled with or immediately followed by a provision that upon the completion of their bridge in the manner and within the time specified it should be inspected by the judges of the court of common pleas of Delaware county, and upon their certifying to the company's compliance with t e act, and not otherwise nor before, toll might be taken. So far as this conferred powers or duties upon the Judge of Delaware county it 49
was not applicable to the Susquehanna or Chenango bridges, which were in other counties, and yet the requirements of the act as to the time and mode of erection of the structures have been conceded on all hands to apply as well to the latter as to their prototypes."

26 id., 314, 315.

1st. *The preamble to this act states the motives and inducements to the making of it.*

"Charters are to be expounded as the law was understood when the charter was granted."

2 Inst. 282.

The general rules of construction applicable to the 50
grants of States do not differ from those applicable to other contracts. Such grants have a liberal and favorable construction for the sustaining of them. The rule that such a grant is to be construed favorably for the State, is one of little importance and of infrequent application, as it is not to be resorted to unless other rules of interpretation fail. It is never to be applied to impair a grant.

The Supreme Court of Connecticut by Ellsworth J. said: "We know not why such stringency is to be applied to a legislative grant more than to any other grant. In every other case where we look to a contract to learn

what are the rights of the parties, we seek to know what the contracting parties intended by the contract, or what the language and scope of the instrument meant to express; and it is the same whether it is a public or private agreement. In other words it is our duty to ascertain by a fair, intelligent and equitable construction of the language made use of, viewed by itself, or in its application to the subject matter, what is the character and extent of the grant. If the intention is clear or satisfactory, then we are bound to adopt it as the rule prescribed by the parties, and to hold it as fully against the legislature as against an individual. Any other rule must necessarily be a false one, and must lead to unjust results and consequences. Such is the view taken by Mr. Parsons in his treatise on contracts, (Vol. II., p. 19, note k,) and by many of the Judges whose remarks are cited by him therein. We feel confident that it cannot be the duty of courts, who sit to carry out the agreements of parties, to be curious and subtle in inventing rules to thwart their intentions legally expressed; especially, if the agreements are founded on valuable considerations, as most public grants are. Courts of justice, we repeat, should endeavour to effectuate contracts, whenever they can do it, by a fair and rational construction of the language made use of. To do otherwise, will be to sacrifice the right of parties, by adhering too rigidly to artificial rules, which are never to be resorted to unless the true meaning cannot be learned otherwise."

Hartford Bridge Co. v. Union Ferry Co., 29 Conne't, [decided 1860,] 221.

The roads incorporated could not be carried into effect, and the public convenience promoted without durable and permanent bridges, and great expense would necessarily be incurred in erecting and maintaining these bridges by reason of the size and rapidity of these streams and the extraordinary freshets and frequent obstructions which the bridges will be exposed to, and their permanency and durability endangered, requiring large sums of money to uphold the same, and forbidding the policy that said property like the roads should revert to

the State, and the act further states the importance of 54
making two distinct bridge incorporations with powers adequate to the accomplishment thereof in the best possible manner.

In the early struggles of new settlements to open roads and building bridges, neither private fortunes nor public revenues could supply the urgent wants of the State. Investments in these enterprises, while they furthered the prosperity of the country, were quite worthless as a source of private dividend to stockholders.—The State being without the necessary revenue to make appropriations of money, and capitalists not finding in them their sources of profit, these public enterprises depended almost entirely upon the public spirit and self- 55
sacrifice of citizens who were willing to appropriate their private property to public uses, without any expectation of a profitable return in dividends. The legislature, to encourage and induce this sacrifice, frequently stipulated in the acts incorporating turnpikes and bridges, as in the act in question, that these public works should have not only a perpetual charter, but should be exempt from taxation, and there should be no competing turnpikes or bridges.

When the charter of 1805 was granted, Binghamton had but two or three buildings; in the language of the defendants' witness, "the inhabitants were few and far between; the population of the surrounding country 56
was sparse, there was very little travel." It was undoubtedly under the influence of considerations like those stated in the act, that the Legislature prohibited other bridges within the two miles. The sparse and dependant settlers could not without the aid of this charter and its promised advantages, induce the capitalist to venture to the then wilderness of Chenango Point. It must have been foreseen when this bridge was built that the arrangements and improvements of the surrounding country would be effected by it—that villages would spring up, and that roads would be made with reference to it, which would be of little use to the public

57 without the bridge, and the plaintiffs' capital was invested in this then great improvement on the faith that this means of travel should be perpetually preserved.

Lord Coke and Lord Bacon both say, "the preamble is a key to open the understanding of the statute," but in this case the motives and inducements of granting the use of the waters for two miles each way, is clearly and expressly engraven on the body of the act; whereas, says Lord Coke, "the words are plain without any scruple, and absolute without any saving."

2 Inst. 533.

"The influence of the preamble," says Mr. Justice
58 Story, in his Commentaries on the Constitution of the United States, "has a foundation in the exposition of every code of written law, upon the universal principle of interpretation, that the will and intention of the Legislature is to be regarded and followed. The preamble is properly referred to, when doubts or ambiguities arise upon the words of the enacting part. The preamble can never enlarge, it cannot confer any powers *per se*. Its true office is to expound powers conferred, not substantially to create them." See to same effect,

Crespigny vs. Wittenoom, 4 T. R. 193;
Edwards vs. Pope, 3 Scam. 465.

59 2d. *But the plaintiffs' bridge was not built until the amended act of* 1808, *induced the capitalist to this work,* (42).

The village from 1805 to 1808, had increased from two or three buildings to only fifteen or twenty buildings, (69.) It was of slow growth. That amendment repealed the thirty years limitation of the charter and gave the name to these plaintiffs, with perpetual succession under all the clauses and provisions of the most favored corporation of the act. The first bridge was erected in 1808; a second bridge was erected 1825, and the present one in 1845, (66), and the defendants' witness testifies that "it has always been kept in good repair," (70).

To induce the plaintiffs to undertake the work they had 60
in view, which at that time was considered a great work this amendment was made in 1808, and from that time there has been a gradual growth of that community to wealth and comfort. That bridge has been the source of incalculable benefit to the public. No human sagacity could have foreseen the extraordinary developments and increase of travel as it there now exists, and no one can deny but that this bridge more than any other cause, led to the present growth and prosperity of Binghamton.

It cannot be doubted, that the enactment of 1808 was intended by the legislature, as an inducement to capitalists to embark in the enterprise in the hope of even- 61
tual remuneration, inspired by the pledge of protection against competition, and that it was so understood and accepted by those who engaged in the undertaking.

The great object to be attained was the bridge, and citizens were induced to subscribe for the stock and build the bridge under the sanction of a solemn act of the State, granting privileges which from the usage of every civilized government where the rights of property are acknowledged, they had a right to believe were guarantied to them by that act, and that they would be protected in that enjoyment by the authority under which they held.

The learned counsel of the defendants will dwell up- 62
on this "charter forever with a monopoly" and exclusive privileges. Daniel Webster once said "what is a monopoly but a bad name given to any thing for a bad purpose." A monopoly is an exclusive privilege conferred on one or a company to trade or traffic in some particular article, such as buying and selling cotton or petroleum in derogation of a common right. Every man has a natural right to buy or sell these articles, but when this right which is common to all is conferred on one, it is a monopoly, and as such is justly odious. But the grant of a franchise is not a monopoly, for it is not a part or parcel of a common right. No man has a

63 right to build a bridge over a navigable river, without the authority of the State. All these franchises whether public property or public rights, are the peculiar property of the State. They belong to the sovereign, and where they are granted to individuals or corporations, they are in no sense monopolies, because they are not in derogation of common right.

"Such grants are not regarded as monopolies in the odious sense of the phrase, but as contracts within the meaning of the constitution.

Sedgwick on Statutory and Const. Law, 625.

Kent says, (1 Com. 8th ed. 511,) "the current of au-
64 thority of the present day is in favor of reading statutes according to the natural and most obvious import of the language, without resorting to subtle and forced constructions." Kent further says, "if the words are not explicit, the intention is to be collected from the context, from the occasion and necessity of the law and the objects, and remedy in view."

3d. *The contemporaneous exposition is that, the section in question of the Delaware Bridge Co., applies to the plaintiffs' charter.*

The history, situation and past legislation of a state may be resorted to, in order to expound its legislative intention.

65 The legislative committee of 1826, with great care inquired into the vested rights of the parties, and were unanimously of the opinion that no bridge or ferry could be established within two miles of the plaintiffs' bridge. It cannot be regarded as untimely, to have recourse to those learned lawyers, who wrote not many years after its passage about this very law. In 1826, the learned Legislative Committee of the House on Courts of Justice, consisting of John Tracy of Chenango, (Chairman,) afterwards Lieutenant Governor, and President of the Constitutional Convention of New York, Ogden Hoffman of New York, afterwards Attorney General, Theodore Sill of Oneida, Samuel S. Lush

of Albany and Daniel Wardwell of Jefferson, declare 66
the intent and meaning of law-makers, in decisive language.

"It appears by the above in part recited acts, that the Chenango Bridge Company was incorporated under all the provisions and regulations of the Susquehanna Bridge Company, and that the Susquehanna Bridge Company, was invested with all the rights privileges and immunities of the Delaware Bridge Company, and one of the rights and privileges granted to the Delaware Bridge Company, was, that no bridge or ferry should be established within two miles either above or below the bridges they were authorized to erect. The Com- 67
mittee *are unanimously* of the opinion that to authorize by law the building of another bridge across the Chenango, at or near Chenango Point, would interfere with the vested rights of the Chenango Bridge Company," (47). That committee were all learned in the law and in common sense.

"Great regard" says Lord Coke, "ought in construing a statute to be paid to the construction which the sages of the law who lived about the time, or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made."

As late as 1845 the same construction was given by 68
the committee on the Judiciary of the Assembly, who concurred in the wise views of the learned and lamented Attorney General Hoffman. The Attorney General recites the history of the legislation in the State in reference to the subject matter of this very statute, and says that he was a member of the committee who made the report above cited, and concurred in that opinion, and that he has not "seen any reason to change the opinion then expressed," (52.)

Referring to the opinion of the Chief Justice in the Charles River Bridge case, the Attorney General says: "The opinion of the learned Chief Justice would clearly lead to the inference, that, had the charter to the Charles

River Bridge Company contained the same restrictions as are found in the charter of the Chenango Bridge Company, now under consideration, the decision would have been different, and the act incorporating the Warren Bridge Company would have been declared void, as impairing the obligations of a contract. And even to this qualified decision I ought to add, that of the learned judges of the Court, Mr. Justice McLean, Story, and Thompson, dissented, they holding that the exclusive privileges to the Charles River Bridge Company were implied from the charter, and that the subsequent act to incorprate the Warren Bridge company was unconstitutional and void."

Repeated legislation and public opinion all concurred in holding this bridge exempt from competition for the distance of two miles, until April 5, 1855, (70), when the Legislature by this act granted to the defendants, exercised a new legislative power, thereby sacrificing its public honor.

The Supreme Court rejected the construction that the sages of the law put upon it, soon after it was made, and after a lapse of half a century adopt the argument of the learned counsel whose favorite bridge is in jeopardy.

The legislative committees were "in favor of reading statutes according to the natural and most obvious import of language, without resorting to subtle and forced constructions for the purpose of either limiting or extending their operation."

Ancient grants are to be expounded according to the law of the time when they were made.

Adams v. Frothingham, 3 Mass. R. 352.

So also the rule may be considered as fully established that, however general the words of an ancient grant may be, it is to be construed by evidence of the manner in which the thing granted has always been possessed and used, as this furnishes evidence of the intention of the parties.

Weld v. Hornby, 7 East 199.

4. These acts in *pari materia* relating to the same suject matter, are to be taken together and compared in

the construction of them, because they are considered as 72
having one object in view and as acting upon one system. Thompson, J., said, "That in construing a statute the intention of the legislature is a fit and proper subject of inquiry, is too well settled to admit of dispute. That intention is to be collected from the act itself, and other acts in *pari materia*."

People v. Utica Ins. Co. 15 J. R. 358, 380.

"If a thing contained in a subsequent statute be within the reasons of a former statute, it will be taken to be within the meaning of that statute. But this is confined to those cases, and those only, where the latter statute is in the same reason as the former." 73

Ld. Raymond, 1028; Sir Wm. More's Case.

"So too, where one statute is enlarged by another, and a third is passed reciting the first, the scond is to be regarded as virtually recited in the last reciting act. For instance, the 13th Eliz. c. 10, concerning leases made by spiritual persons, was enlarged by 14 Eliz. c. 11; the former was only recited in 18 Eliz. c. 11; yet it was holden, that the latter was virtually recited therein."—(Bayley v. Minin, 1 Vent 246.) "All acts in *pari materia*," said Lord Mansfield, "are to be taken togther as if they were one law."

The Earl of Ailesbury v. Pattison, Doug. 30

This sound rule has been frequently recognized in this 74
country. On this principle, "in many instances," say the Court of Errors of the State of New York, "a remedy provided by one statute will be extended to cases arising on the same matter under a subsequent statute."

Rogers v. Bradshaw, 20 J. R. 735, 744.

"And so it was held, that a provision for compensation embarced in an original act of 1817, extended to the cases arising under an act passed in 1820, conferring additional powers on Canal Commissioners."

Kent says: "The object of the rule is to ascertain

75 and to carry into effect the intention; and it is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions."

1 Kent. Com. [8th ed.] 513.

5th. The right to exclude all other bridges for the distance of two miles, is not a mere restriction upon individuals, public officers and authorities and other corporations, but constituted a *restriction upon the sovereign authority of the State.*

76 As before stated three of the eight Judges of the Court of Appeals held that, "the act incorporating the Susquehanna Bridge Company and made applicable to the Chenango Bridge company does no , by giving it all the rights of the Delaware Bridge company, confer upon it the benefit of a provision in favor of the latter company that no bridge should be erected within two miles of its bridge across the Delaware, so as to guaranty the former against the erection of a bridge within the like distance from its bridge across the Chenango:" Per Wright, Davies and Marvin, J. J., and five of the eight Judges held, "if that be otherwise, the provision that it shall not be lawful for any person to erect such
77 bridge, or to establish a ferry, within two miles, is to be construed as prohibiting the establishment of a bridge or ferry under the laws then existing, and not as a contract, by which the Legislature renounced its power to authorize such bridge or ferry at any future time."

Such is the head note of the reporter of the Court of Appeals, as will appear in 27th New York Reports.

The 31st Section of the act of 1805, confers upon the corporation or corporations to which it applies two distinct privileges, one that it should not be lawful for any person to have any other bridge or ferry within a certain distance of those authorized by the act, and the other that it should not be lawful for any person to pass the bridges of the corporation, without paying toll. These provisions are given in the same

terms and in immediate succession. The act declares 78
in precisely the same phrase, that it shall not be lawful for any persons to erect any bridge within the prescribed limits, or to cross the bridges to be built by the company without paying toll. Both these grants must have a similar construction.

If the interpretation applied by the defendants to that part of the section forbidding the establishment of another bridge or ferry, be correct, the residue which confers upon the plaintiffs the right and the power to exact tolls for the use of their bridge, must be construed in a similar manner. If the legislature are not forbidden by the clause now in question, from authorizing the construc- 79
tion of another bridge within the limits of two miles, they are equally at liberty to authorize any person to pass the plaintiffs' bridge, without the payment of tolls. This would leave the most vital and valuable part of the plaintiffs' franchise, notwithstanding the irrepealability of the statute conferring it, wholly at the mercy of subsequent legislatures. It is a consequence hardly to be contended for, and yet it is difficult to see how it can be escaped, if the principles of construction for which the defendants contend are to be adopted.

Judge Emott says, "It is true that when the legisla- 80
ture in an ordinary statute declares that a particular act is not or shall not be lawful, it simply declares a fact, and a fact which it is at any time competent to alter, by establishing a different rule of law in the particulars referred to. But this statute is more than a mere law, it is a contract with the plaintiffs, and the provision that the erection of another bridge shall not be lawful, is one of its terms. It would be a narrow and unreasonable construction of a contract by a private individual that a certain thing should not be done, to hold that its meaning was that it should not be done until *he chose to permit it.*

The thing stipulated against by this statute is some thing which the legislature alone can do or authorize to be done, and it is as narrow and but little more reason-

81 able a construction of their language, declaring that it shall be unlawful, to regard it as meaning that it shall not be lawful until they chose to authorize it."

26 Howard's Practice Reports, 323.

The Presiding Judge was of the opinion, that if the legislature was competent to license another association of adventurers, to build competing bridges, at a considerable distance of time, but within the continuance of the charter, they could do so, at an earlier period, or as soon as the first bridges were constructed; and if they could license others by granting to them an act of corporation, *a fortiori* they could erect a *free State Bridge*, and then
82 remove all obstructions to the passage of the river otherwise than upon the plaintiffs' bridge.

"We can have no idea of a contract where one of the parties only is bound, or for a contract annexed to a grant which may be removed by one of the parties as soon as it was made."

Id. 307

The plain meaning of the clause is that it shall not be *made* lawful for any other person or corporation to erect a bridge within the restricted distance, and that in the usual legislative form also, in which the public faith is pledged and exclusive privileges granted. "It should
83 not be lawful," was the enactment in the Bridge Company vs. The Hoboken Company.

1 Wallace's Reports 118.

POINT THIRD.

The act passed April 5th, 1855, incorporating the defendants' company, is void by the Constitution of the United States, because it violates the obligation of a contract.

This contract is stated in precise language in the complaint. After referring to the acts of the legislature, said complaint claims that it "was particularly specified and agreed in the said acts, that it should not be lawful for any person or persons to erect any bridge or estab-

ish any ferry within two miles above or below the 84
bridge of the plaintiffs; that no power to alter, modify or repeal said charter, was in any manner reserved therein, but that the same was an absolute, unconditional and unlimited contract with the plaintiffs."

The §10 of the 1st art. of the Constitution of the United States, provides that "no State shall pass any law impairing the obligation of contracts," and under this clause two questions of great importance have been agitated.

The one question is, what is a contract within the meaning of this section.

The second is, what interference with a contract is 85
considered as impairing the obligation thereof.

These two questions are adjudicated by this Court.

The learned Chief Judge of the Court of Appeals of New York says, that "In this class of cases, which involve questions arising under the Constitution of the United States, *we receive the mature judgments of the Supreme Court of the Union as authentic evidence of the law*, because it is the tribunal which the Constitution itself has appointed to decide such questions; and our judgments are subject to review there, and to be reversed if they shall fail to conform to the law as there laid down."

26 Howard's Pr. Reports, 298.

1*st. It is settled that a Legislative grant is a Contract*— 86
executed, but still a contract.

Dartmouth Coll. vs. Woodward, 4 Wheaton, 656.

And when a grant is to a corporation, the State cannot revoke it.

Wilkinson vs. Leland 2 Peters, 657.

Therefore where there is a valid grant, any statute which permits a diminution of the value of the thing granted, or of the rights and interests belonging to them by the grantor, impairs the obligation of the contract.

Planter's Bank vs. Sharp, 6 Howard, 301, 327.

87 Where franchises are granted to a municipal corporation, this grant cannot be revoked nor the property or rights conferred by it, in any way divested by the State.

Town of Paulet, vs. Clark, 9 Cranch 292;
Dartmouth Coll. vs. Woodward, 4 Wheat. 518;
Bailey vs. Mayor of N. Y., 3 Hill, 531.

The act of the Legislature incorporating the plaintiffs and their acceptance thereof, and acting and investing their property under it, created a contract between the State and the plaintiffs.

There was no reservation of power to repeal or amend
88 *the plaintiffs' charter.*

The Superior Court of New York, in 3d Duer, at page 146, in the case of the State of New York against the Mayor and Aldermen of the city of New York, say "that the statute of the State, which is in its nature a contract, and which does not reserve to the legislature the power to repeal it, cannot by a subsequent repeal divest rights acquired under it, is settled law.

Fletcher vs. Peck, 6 Cranch, 87;
Dartmouth Coll. vs. Woodward, 4 Wheaton 418.

In the Dartmouth College case, Justice Story declared the rule to be that immunities, franchises and other
89 rights whenever they are the subject of a contract or grant, are just as much within the reach of the constitution of the United States as any other grant.

At the adoption of our Revised Statutes, such being regarded as the settled law, a provision was incorporated therein that, the charter of every corporation that shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature."

1 R. S. 600, 28;
The People vs. The Manhattan Co.;
9 Wend. 351, 392-3.

The plaintiffs' act is exempt from this existing law.

Parsons says: "It has been very solemnly and we hope authoritively decided that a corporation is a per-

son who may take a grant as well as any individual. 90
that a corporation erected by the legislature or adopted by the legislature, and endowed with certain powers and franchises and property, the legislature reserving no interest in what is given them—such a corporation is a private corporation, to whom a franchise has been given by a grant which is *an executed contract*,' and that any deprivation of their property, or any disturbance or denial of their rights and franchises, impairs the obligation of the contract."

2 Parsons on Con. 518.

As this legislative grant conferred an exclusive privilege, the constitution made such grant irrevocable, and 91
forbids any repeal or interferance with it. Upon the so called right of eminent domain the defendants base their argument, which right was early questioned in the Dartmouth College case, where it was decided that the charter granted to that institution by George the 3d, was a contract within the meaning of the constitution inviolable, and that the legislature of New Hampshire could not annul the contract, or in any way impair its obligation.

4 Wheaton, 518.

The counsel for the defendants in attempting to vindicate the act of 1855, which act was probably the result of oversight, will claim that *perpetual succession* cannot 92
"in its popular etymological sense mean endless. *Perpetual* is defined by Webster: 1. never ceasing, continuing forever in future time; destined to be eternal; as a perpetual covenant, a perpetual statute." 3. "Permanent; fixed; not temporary: as a perpetual law or edict."

"Every statute for the continuance of which no time is limited, is perpetual; although it be not expressly declared so to be."

Smith's Com. on Stat. and Cont. 594 § 429.

With the defendants, *perpetual*, means just so long as we please, and no longer.

The plaintiffs do not suppose that the parties to their

93 charter understood something beside that which appears on the face of the contract.

It is but natural and just to suppose that both parties understood their words to mean just what they said and that under the unyielding prohibitions of the constitution of the United States, they were mutually bound to their exact, faithful and perpetual fulfillment. The defendants argument may be well with those whose passions are excited by passionate declamations against tribute money, odious "monopolies and exclusive privileges," but it is an argument redolent with the odor of *repudiation:* is condemned by the morality of the world, and can find no durable resting place in courts of
94 justice.

2*d. This interference with the plaintiffs' contract impairs the obligation thereof.*

The practical operation and effect of the Binghamton Bridge Charter upon the rights and property of the plaintiffs, is to take the property of the plaintiffs, and give it to the defendants. It in fact confiscates not for the State, but for an usurping private corporation, the charter of an ancient corporation that has done the State good service, and thereby this act violates those distinctions of right and wrong, of justice and injustice, which lie at the foundation of all law and all govern-
95 ment. It should be kept in view that,

Both parties are corporations.

Both are created by the State Legislature. Both claim rights to maintain a toll bridge across a navigable river, and that the plaintiffs' claim is first in time.

The learned counsel of the defendants, forgetful that he is laboring to sustain his favorite bridge, will seek to bring the plaintiffs' claim into reproach. His course of remark cannot affect their right to their property, if this Court shall consider that property has been taken from the plaintiffs by procedings which violate *a contract.*

It will be repeated that the proprietors of the Chenango Bridge have divided 16 5-8 per cent., and there-

by become gorged by enormous dividends. This will 96
be rather a picture of fancy, but this is not the question upon which the court has to decide. It is *a question of contract*, and if it is so, where is the necessity to inquire whether the plaintiffs have received the liberal dividend of 16 5-8 per cent., or a much smaller amount. It is a contract that the plaintiffs may be reimbursed for their large expenditures, by the receipt of tolls; and it is claimed that the State which by its law brought the company into existence, by allowing these tolls and prohibiting competition for a limited distance therefrom, may break the contract because the amount of tolls is large, and that if the right of eminent domain has been granted away by the legislative act, the same may be 97
resumed against the express terms of the grant.

The plaintiffs deny this position. They hold that the obligation of the contract is complete; and that other means than by its violation may protect the interests of community. That such a violation of a contract would be fatal to the confidence of the governed, in those who govern, and would allow those who seek to undermine institutions that have heretofore been considered as stable, to destroy the security of all property and all rights derived under it. The original stockholders are probably all dead, the property has long since passed into other hands, but if they were now living and holders of this property, they would not have gained so much by 98
their purchase, as those who bought real estate at that period and kept it until this day.

The doctrine has recently been repeated in the Supreme Judicial Court of Massachusetts, in the case in which the charter of an early railroad company contained a provision, that no other railroad than the one thereby granted should within thirty years after the passage of the act, be authorized to be made upon the same route. Charters were subsequently granted by the legislature to several railroad corporations, which together authorized a line of railroad, nearly corresponding with the plaintiffs' road. The court, after hearing an elaborate argument, and by a carefully prepared opinion by

99 the late Chief Justice Shaw, decided in favor of the plaintiffs' claim to an exclusive right, and gave judgment for an injunction against operating the defendants' roads.

In that case the learned Chief Justice remarked:

"Supposing Ferries or Bridges are obviously necessary over a long and broad river; it is equally obvious that no public convenience would require them to be built parallel and close to each other; on the contrary, such erections would be an unnecessary waste of property.—Would it not be for the legislature to decide within what stated and fixed distances from each other public
100 convenience would require them? If they were erected by funds drawn directly from the State, the Legislature would plainly have the power to determine such distances, and provide that no one should be built within the distances thus fixed. May they not with a due regard to the public exigencies and public interests, do the same thing when such public works are erected by individuals, at the instance and procurement of the government for public use? Were it otherwise, and were all such grants and stipulations repealable by a subsequent legislature, because they are in the form of laws, then the unlimited power of the legislature to alter and change
101 the laws, sometimes called, rather extravagantly, the omnipotence of Parliament, would be a source of weakness, and not of strength. In making such grants and stipulations, no doubt great caution and foresight are requisite on the part of the Legislature, a just estimate of the public benefit to be procured, and the cost at which it is to be obtained. When such a contract has been made by the Legislature, upon considerations of an equivalent public benefit, and where the grantees have advanced their money to the public upon the faith of it, the State is bound by the plain principles of justice, faithfully to respect all grants and rights thus created and vested by contract."

Boston and Lowell R.R., Corporation v. The Boston and Lowell R.R. Co., 2 Gray, 33, 34.

The Dartmouth College case settled the general doc- 102
trine, that *legislative charters* like legislative grants of land, are contracts within the meaning of the Federal Constitution. That decision was pronounced in 1819, and has been followed by all the American Courts, except Ohio, and the Courts of Ohio have been reversed by this Court.

Angell and Ames on Corp. §31, §469, §767;
Dartmouth College vs. Woodward, 4 Wheaton 518;
East Hartford vs. Hartford Bridge Co. 17 Conn. 93;
McLaren vs. Pennington, 1 Paige 102; 2d Kent's Com. 305, 306.

University of Maryland vs. Williams, 9 Gill & John. 402;
Aberdeen Academy vs. Mayor of Aberdeen, 13 Smedes & Marsh 645. 103

Young vs. Harmon, 6 Georgia R. 130;
Bash vs. Shipman, 4 Scammon; (Ill.) 190;
State vs. Haywood, 3 Richardson (S. C.) 389;
Baily vs. Railroad Co. 4 Harrington (Del.) 389;
Michigan Bank vs. Hastings, 1 Douglas (Mich.) 225;
Boston and Lowell Railroad vs. Salem & Lowell Railroad, 2 Gray 1.

Aurora and Lau. Turnpike Co., vs. Holthouse, 7 Port. (Ind.) 59;

City of Louisville vs. Prest. & Trus. of University of Louisville 15 B. Monroe 642;
Yarmouth vs. N. Yarmouth, 34 Maine 411;
The Bank of Penn. vs. The Commonwealth, 7 Harris, 151;
The Iron City Bank vs. The City of Pittsburg, 1 Wright (Pa.) 340. 104

Washburne in the 2d vol. of his able work on real property published in 1862, says, "If the charter for constructing a bridge should contain a restriction as to the distance within which no other bridge shall be erected, the legislature could not, constitutionally, authorize it to be done. It would be a contract where the consideration on the one side is the rendering a benefit to the public in doing what the franchise authorizes to be done, and on the other the advantage to be derived from the exercise of such franchise, and detracting from the profit thereof, would be a violation of the obligation of a contract. And the same rule would be applied in respect to

105 any two competing franchises, like ferries, bridges, or railroads."

2 Washburne on Real Property, 22, §10.

The Dartmouth College case, before referred to, has been considered one of the most important judicial decisions that has ever been pronounced in this country.

Although more than questioned by the learned Counsel of the defendants, who claim that "the enactment of a law is not a contract," it has been followed as appears by the cases before cited, and the doctrine may now be regarded as settled in every State of the Union, that an act of incorporation accepted and acted upon by the
106 corporators, is a contract between the State and the corporators, which a subsequent legislature may not impair.

"All the cases," said Judge Black in the Bank of Pennsylvania vs. The Commonwealth, 7 Harris, 151, "are saturated with this doctrine. It is sustained not by a current, but by a torrent of authorities. No Judge who has a decent respect for the principles of *stare decisis*—that great principle which is the sheet anchor of our jurisprudence, can deny that it is immovably established."

In the more recent case in the Supreme Court of the
107 United States of the State Bank of Ohio vs. Knoop, 16 Howard, 369—Justice McLean speaking for a majority of that Court, held this language: "Every valuable privilege given by the charter and which conduced to an acceptance of it, and an organization under it, is a contract which cannot be changed by the Legislature, where the power to do so is not reserved in the charter."

In the more recent case of the Bridge Proprietors vs. Hoboken, this question seems to be put at rest.

This Court there say, "It is said, however, that it is not the validity of the act of 1860 which is complained of by the plaintiffs, but the construction placed upon that act by the State Court. If this construction is one

which violates the plaintiffs' contract, and is the one on 108
which the defendants are acting, it is clear that the plaintiffs have no relief except in this Court, and that this Court will not be discharging its duty to see that no State Legislature shall pass a law impairing the obligation of a contract, unless it takes jurisdiction of such cases."

1 Wallace's Reports, at page 144.

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Maine, April 1, 1836, subject to the liabilities and duties provided by an act concerning corporations, passed February 16, 1836, which provided that in case of a deficiency of corporate property, the individual property of a stockholder should be liable to the amount of his stock for all debts of the corporation contracted prior to its transfer, and for the term of one year after the record of the transfer in the books of the corporation, and for six months after judgment recovered against the corporation in a suit commenced within that year. The plaintiff in error recovered a judgment against the Kennebec and Portland Railroad Company, which he was unable to satisfy out of its property, the corporation being in- 110
solvent; and then he brought his action against the defendant, who was a stockholder to the amount of $2,500 when the debt was contracted, and no transfer of whose stock had been recorded on the books of the corporation. At the trial the court instructed the jury that the act of the Legislature of Maine of April 9, 1856, had taken away the plaintiff's right to recover, and that therefore the verdict must be for the defendant. To this the plaintiff excepted, and the case was carried before the Supreme Court of Maine, where the exception was overruled and judgment rendered for the defendant. To that judgment, a writ of error was sued out to this Court as in the case now under review, upon the

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111 ground that the act of the Legislature of Maine, of April 9, 1856, impaired the obligation of a con ract (protected by the Constitution of United States,) between the plaintiff and defendant, which contract was a part of the fundamental law of the corporation, its charter containing an assurance that the individual stockholders would be liable, and the defendant, by becoming a stockholder, consented to this assurance, and the plaintiff, in giving credit to an insolvent company, trusted to this assurance. The defendant contends that there was no contract in the case; that the provision relied upon was not in the charter of the company, but in an independent act which the Legislature had a right to repeal without
112 violating any contract.

This Court decided that the judgment of the Supreme Court of the State of Maine should be revoked and the cause remanded with directions to award a *venire facias de novo*.

POINT FOURTH.

This act of the defendants appropriates private property without compensation.

It is incident to the sovereignty of every government that it may take private property for public use, but the obligation to make compensation is inseparable from
113 the right.

In the Bridge Proprietors v. The Hoboken Co., the legislature in the defendants' charter made careful provision that just compensation should be first made for damages. In the case now under review, no "such provision is made."

Chancellor Bland of Maryland, in giving his opinion in an important case, says: "The government of this Republic by virtue of that *eminent domain*, which for public purposes is entrusted to all governments, may take the property of any individual and cause it to be applied to the use of the public, on making him a reasonable compensation."

Hepburn's case, 3 Bland (Md.) Ch. R. 98.

Parsons on contracts, (2 Vol. 523,) says :—"It must 114
be remembered that the right of eminent domain authorizes the taking of private property by the sovereign, first for public purposes and second on making a provision for compensation. But one of these provisions is as essential as the other, and it is only when both are regarded, that private property can lawfully be taken. It follows therefore that if there be no public necessity, there is no public right; and the land taken by the sovereign without such necessity, although for compensation is unlawfully taken."

Washburne in his 2d Vol. on real property, 23, § 11, says: "But this does not affect the right to exercise 115
eminent domain over the franchises of existing corporations, in the same manner as over any private property. Thus a legislature may authorize a bridge to be erected so as to occupy and destroy a ferry, or a railroad company, or a city to appropriate the bridge property of a company, and thereby destroy its franchise: or even may authorize one railroad company to destroy the franchise of another, in constructing its own road under the exercise of this power of eminent domain, *provided compensation is, at the same time, secured to the party thus deprived of the prior franchise.*"

Central Bridge Co. vs. Lowell, 4 Gray, 474; 116
West River Bridge Co. vs. Dix, 6 How. 507;
White River Turnpike Co., vs. Vermont Cent. R. R. 21 Vt. 590.
Richmond R. R. vs. Louisa. R. R. 13 How. 71, 83;
Redf. Rail. 129;
Boston Water Power Co. vs. Bost. & Wor. R. R. 23 Pick. 360.

It would seem that even the right of eminent domain, which is said to rest on the basis of supposed imperious necessity, cannot disturb vested rights, without affording *ample compensations for all the injury which may be done.*

The plaintiffs, therefore, place their trust upon the precedents and authority so firmly established by this high Court during the last half century, in support of

117 that constitution which maintains the faith of the Republic in the security of private property, against legislative violence. HENRY R. MYGATT, Atty.
and of Counsel for Plaintiffs in Error.

SUPREME COURT OF UNITED STATES.

THE CHENANGO BRIDGE COMPANY,
Plaintiff in error,
vs.
THE BINGHAMTON BRIDGE COMPANY,
Defendants in error.

In Error to the Court of Appeals of the State of New York.

BRIEF AND POINTS OF COUNSEL FOR DEFENDANTS IN ERROR.

STATEMENT.

The questions in the State Courts were as follows :—

The plaintiff in error in this action, claiming to be a chartered Bridge Company, and having erected a toll bridge across the Chenango River, in the village of Binghamton, N. Y., claimed the exclusive right of maintaining a Bridge across said River and collecting tolls within *two miles above and below its structure*.

The defendant in error, being an incorporated Bridge Company under a charter granted in 1855, and having erected a Bridge across said River within two miles of the plaintiff's Bridge, the plaintiff prayed relief against the defendant's

Bridge by perpetual injunction, &c., upon the ground that the charter of the defendant's Bridge was unauthorized by the constitution, &c.

In *this Court*, we deny the jurisdiction to re-examine the judgment of the State Courts. It was in equity, and the record we insist, does not show a case where the decision of the State Court was *in favor of the validity of a State Statute*. So far as the *record* speaks, under the New York Code practice the finding of facts and conclusions of law, it is not in favor of the validity of the act of 1855, under which the defendants were incorporated. So far as it considers the act or draws it in question, it holds it *invalid*, as impairing the obligation of a contract, *if there was any contract with an obligation to impair :* It first holds this, and then merely decides that the acts of 1805 and 1808, under which the Plaintiff claims its corporate and exclusive privileges, *so far* as the exclusive privileges are concerned, for geographical and other reasons have no possible application whatever to the plaintiff's Bridge, and were not designed to have. (See findings of fact and of law by Justice Gray, from folio 72 to folio 89 of case.) If any State Statute was seriously drawn in question and construed by the judgment of the Court, it was the acts of 1805 and 1808, and as to them they were held *inapplicable*.

This case upon the point of jurisdiction is by no means like that of the Passaic and Hackensack Bridges vs. The Hoboken Land Improvement Company. In the New Jersey case it was conceded, that by the act of 1790 *and the agreement made by the State Commissioners with the Bridge Company under its authority, a contract with an obligation existed.* The question therefore of a contract was practically out of the case. In entering upon the discussion of the main question in that case, Mr. Justice Miller, in pronouncing the opinion of the Court, commenced by saying :—

"Approaching the merits of the case, the first question that presents itself for solution is, whether the act of 1790 and the agreement made under it by the commissioners with the

bridge builders, constitute a contract that no bridge shall be built within the designated limits, but the two which that statute authorized. This we think to be so very clear as not to need argument or illustration. The parties who built the bridges had the positive enactment of the Legislature, in the very statute *which authorized the contract* with them, that no other bridge should be built."

The question, and the only *real* question in that case, in all the Courts was, whether the structure erected under the act of 1860, was, a bridge, within the meaning of the legislation and contract of 1790. It was held that it *was not*, and the bill was dismissed. Under *these circumstances* the Court held it *had* jurisdiction, though Justice Greer strongly dissented.

We have already seen the grounds upon which the case now under consideration was disposed of at the trial, (Special term,) before Justice Gray, for *his reasons form part of the record proper*. This judgment was affirmed at the General term upon the same grounds, as will appear by the opinion of the Supreme Court, pronounced by Justice Mason, appended to these points

The New York Court of Appeals is a court of *appellate jurisdiction merely*. It could only affirm or reverse the judgment of the Supreme Court, and it did the former, rendering upon one point the same and upon another *other reasons* for its decision, than those given by the Supreme Court. If we look at the prevailing opinion given in the Court of Appeals by Judge Wright, we shall see that *he and two of his associates, concurred with the Supreme Court, that the Delaware charter did not apply*, and five held that there was *no contract*. But we submit that the *record* shows the only grounds of the judgment at special term, and what was drawn in question, and that *the reasons of the appellate court, outside* of the record are no part of the judgment or record, and be they what they may, neither confer nor take away jurisdiction.

The grounds of the judgment at the trial before Justice Gray, we insist should be, for all jurisdictional purposes, deemed the grounds for affirmance, and should control.

But again, can a *party* give this court jurisdiction by *assumption* or manufacture it? Suppose the Erie Railway, traversing the southern counties of New York, should *claim* a monopoly over the New York Central, and insist, no matter how absurdly, that *its* charter included *exclusive privileges* granted to the Camden and Amboy, or some other monopoly, and the courts should hold that such *exclusive privileges* had no place in the Erie Charter; never had, never were intended to have, and that the Erie Charter had no exclusive privileges in it. Would *such* decision, so far draw in question the Charter of the New York Central and pronounce *in its favor*, as to give this court jurisdiction?

In other words, can a corporation borrow, with or without leave, the provisions of a neighboring charter, and assert them as its own, and thus confer on this court jurisdiction to review the legislation and judicial proceedings of a State, which ordinarily belong to the State Courts alone, and should rest there.

Nor, according to the New York practice, under the "Code of Procedure," can a case be *certified into jurisdiction.* This practice requires the justice who tries the case, to *find the facts and conclusions of law*, and to state them separately, as Justice Gray has done. (See Code of Procedure §267.)

The record shows, according to this peculiar practice, what *was drawn in* question and what was not, and if the appellate court went beyond it, for *grounds*, and drew in question matters outside, and affirmed the judgment for reasons of their own, not necessary to the case, this will not give jurisdiction. Nor is it a case where the appellate court, or its clerk, or both, can change the *record*, by interpolating into the *remittitur*, a statement of what was or was not drawn in question.

This presents a case not contemplated by the rule laid down in 16 Peters, 285, and the clerk's certificate is unauthorized and gratuitous and should be disregarded.

Passing from the question of jurisdiction, to the merits of the case, the questions which arise are:

First—Had the plaintiffs any charter whatsoever, giving them, in any form, an exclusive right to maintain a Bridge across the Chenango at Binghamton, &c.

Second—If they had such a charter, was it so framed, as under the circumstances, to place it beyond the power of the Legislature so to modify it, as to grant another charter within the prescribed limits, when demanded by the public interests.

Before proceeding to the discussion of these questions, the defendant's counsel make the preliminary point, that the plaintiffs, in their *corporate name* cannot maintain this action. It is not one of the offices of the *corporation* to prosecute and recover for damages, not to *it*, but to its *stockholders*. That if it can be maintained it must be in the name of individuals claiming to be stockholders. (See motion to dismiss, fol. 17.)

But to proceed to the main points of discussion:

First—Had the plaintiffs an exclusive right, within two miles each way, to maintain a Bridge across the Chenango River at Binghamton.

Their chartered rights are derived as follows:

By an act passed April 6th, 1805, entitled "An act to establish a Turnpike Corporation from Oxford to Newburgh, and for other purposes," Session Laws of 1805, (see folio 18 of case,) which is an act of forty-three sections, creating some

eight or ten corporations, and among them the Neversink Turnpike Road Company, in which it is provided by section 23, (folio 31.) that a Company for the purpose of building Bridges over the *west* and *east* branches of the Delaware River, shall be incorporated by the name of "The President and Directors of the Delaware Bridge Company."

The 31st section of the act, (folio 36,) provides that "*it shall not be lawful for any person or persons to erect any Bridge or establish any ferry across the said west and east branches of Delaware River within two miles either above or below the Bridges to be erected and maintained in pursuance of this act, except when,*" &c. [Read section at length, at folio 36 of case.]

Section 36, (folio 37.) provides that at the expiration of thirty years *the Bridge shall become the property of the people of this State.*

Section 38, (folio 38,) incorporates a Company, to be called "The Susquehanna Bridge Company," for the purpose of erecting a Bridge across the Susquehanna River at Oquaga, (Windsor); and also for erecting a Bridge across the Chenango River at Chenango Point, (Binghamton.) This section also provides that this Bridge Company, "*their successors and assigns, shall and may have perpetual succession* AND SHALL BE AND HEREBY ARE INVESTED WITH ALL AND SINGULAR THE POWERS, RIGHTS, PRIVILEGES, IMMUNITIES AND ADVANTAGES, AND SHALL BE SUBJECT TO ALL THE DUTIES, REGULATIONS, RESTRAINTS AND PENALTIES, WHICH ARE CONTAINED IN THE FOREGOING INCORPORATION OF THE DELAWARE BRIDGE COMPANY, *and all and singular the provisions, sections and clauses thereof, not inconsistent with the particular provisions herein contained, shall be and hereby are fully extended to the President and Directors of this incorporation* X *and the commissioners appointed by this act for opening*

X Judge Wright in delivering the opinion of the Court of appeals holds that the privileges &c. are those given and belonging to a Bridge Co. as such. (See points page 38.)

books to receive subscriptions to the Neversink Turnpike Road Company, shall in like manner open books to raise subscriptions for the stock of this incorporation. (The Susquehanna Bridge Company.)

The privileges &c are not made a part of the charter - but are "extended to it."

All the sections commence "Be it enacted," &c., and the 43d section, (folio 42) declares the act a "*public act.*"

By a further act passed April 1, 1808, entitled "An Act to amend the Neversink Turnpike Road and Suquehanna Bridge Company, and for other purposes," &c., Session Laws of 1808, (folio 42,) after providing by sections 1 and 2, that parts only of said Neversink Turnpike Road may be constructed, and a toll-bridge be built across Rondout Creek, &c., it provides by section 3, (folio 43,) as follows:

§3. "*And be it further enacted,* That the incorporation of the Susquehanna Bridge Company shall hereafter be deemed and considered to exist for the sole purpose of erecting and maintaining a toll-bridge under their said charter across the Susquehanna River at Oquaga, under all its present provisions, *except the limitation of its duration of thirty years, which said limitation shall be and hereby is repealed:* and that the capital of said company shall hereafter consist of ten thousand dollars in stock, and the time within which it shall be built shall be and hereby is extended to four years from the passing of this act.

No allusion is here made to the privileges of the Delaware Charter.

§4. (folio 43) "*And be it further enacted,* That for the purpose of erecting and maintaining a toll-bridge across the Chenango River, at or near Chenango Point, the present stockholders of the Susquehanna Bridge Company, or such others as shall associate for that purpose before the first day

of January next, shall be and hereby are created a body corporate, in fact and in name, by the name and style of 'The Chenango Bridge Company,' and as such to have perpetual succession, under all the provisions, regulations, restrictions, clauses and provisions of the before mentioned Susquehanna Bridge Company, and their capital in stock shall consist of ten thousand dollars."*

The foregoing section contains the provisions under which plaintiffs' claim their exclusive right.

By reference to the petition for defendants' Bridge, folio 13, it will be seen how the necessity for its erection was represented to the Legislature:—by reference to evidence, folio 66, and to Judge Gray's decision folio, 75, it will be seen that the Plaintiffs' Bridge cost $4,500, and that that amount only was paid in,—the nominal capital being $10,000. *and that for thirty years it has paid in dividends* 16⅔ *per cent. on* $10,000,—*something like* 35 *per cent per annum on capital invested.* These are strong reasons with *plaintiffs'* for its exclusive continuance.

By reference to evidence from folio 65 to 70 inclusive, and to findings of fact by Judge Gray, from folio 72 to 75 inclusive, the facts in the case will fully appear

The defendants' counsel insist upon the well-known principle of construction, that all statutes which seek to abridge the power of Legislation – to prohibit the exercise of natural or common law right and oppress the people—to confer monopoly or impose restraints or penalties, are to be construed most strictly against those asserting the exclusive right and most favorable for the public.

* Here was an entire new Corporation "created with perchance new Stockholders under the provisions of the Susquehanna Co. Nothing said of privileges &c Was this meant for the Susquehanna proper or with implications? No allusion is made to the Delaware charter.

again no allusion is made to advantages of Delaware charter

See opinion of Taney, Chief Justice, in Charles River Bridge, vs. Warren Bridge, and cases there cited, 11 Peters, 544.

Mohawk Bridge Co. vs. Utica and Schenectady Railroad Co., 6 Paige R. 555.

Stourbridge Canal, vs. Wheeling, 2d Barn. & Adol. 793.

Ohio Life and Trust Co. vs. Debolt, 16 How. 427.

Pennsylvania Rail Road Co,, vs. Canal Commissioners 21 Pa , Jtate Rep. 22.

Tuckahoe Canal Co., vs. James River Rail Road 11 Leigh. 42. Bank of Pa. vs. Commonwealth, 7 Harris, 152, 155.

We have seen that the clause under which the exclusive privilege is claimed is contained in the 31st section of the act which incorporates the Delaware Bridge Company, and is as follows :

(Folio 36,) "That it shall not be lawful for any person or persons to erect any bridge or establish any ferry across the said east and west branches of Delaware River, within two miles either above or below the bridge," &c.

It is contended by the plaintiffs in error, that this "*exclusive right*," of the Delaware Bridge Company was transferred to the Susquehanna Bridge Company, by the 38th section of the act of 1805, (folio 38,) which incorporates "The Susquehanna Bridge Company," and authorizes it to build the Oquaga and Chenango Bridges, and declares that the company are invested "with all and singular the powers, rights, privileges and advantages, and are subject to all the duties, regulations, restraints and penalties which are contained in the foregoing incorporation of the Delaware Bridge Company, and all and singular the provisions, sections and clauses thereof not in-

The new condition of the country was a reason for granting a qualified restriction - the promise such a valley gave, a reason why the Legislature should return it under the sovereign control; also why the corporation should accept it with the right of modification or repeal: the dividends paid show how correctly the legislature judged.

consistent with the particular provisions herein contained, shall be and are hereby fully extended to the President and Directors of this incorporation."

The plaintiff in error further insists that by the act of 1808 the Susquehanna and Chenango companies gained separate charters, and both got rid of the Delaware 30 years limitation and were each made perpetual, &c.

And that by the 4th section of the act of 1808, (folio 43,) which incorporates the *Chenango Bridge Company separately*, under that name, declares it was for ever to "have perpetual succession, under all the provisions, regulations, restrictions, clauses and provisions of the before-mentioned Susquehanna Bridge Company, the exclusive privilege included," &c.

The defendants' counsel contend that this "*exclusive right*," whatever it may have been, in the Delaware charter, *was not and could not consistently have been extended to the Chenango Bridge Company by any general phraseology ; because*

First—It appears there were two branches of the Delaware River, the "West" and the "East," and that the Chenango River at or near the "Point" was but a single stream, and had no "*two miles below.*" (see map.)

Second—Because the "powers, rights, privileges and advantages," and all the "provisions, sections and clauses thereof (of the Delaware Bridge Company,) not inconsistent with the particular provisions therein contained," of the

Delaware Company, which were sought to be conferred on the Susquehanna Company, were only such powers, rights, privileges, advantages, &c., as related or pertained to the corporation merely. That this language did not carry with it collateral provisions relating to and restraining the acts of other persons, touching or concerning the branches of the Delaware River, which might not have been in any respect applicable, and could not have had, geographically, any application to the Chenango River whatsoever--the Chenango having no "west" and "east" branches at or near the "Point," and terminating its existence and merging its identity and name in the Susquehanna about one hundred rods below the proposed and actual location of the Chenango Bridge. The prohibition applies to any other stream *above* and *below* as well as to the Chenango. So that the "two miles prohibition *below the Chenango Bridge*" would prevent the erection of a Bridge, or the establishing of a ferry, across the Susquehanna, that being, after one hundred rods, the only stream below within the prescribed limit, however great the public demands or urgent the necessity, and, although, as we shall see presently, such a Bridge or ferry across the Susquehanna would greatly benefit the plaintiffs.

Judge Gray's legal conclusion. fol 87, 88 of case. Special term Judge Mason's affirming it. Gen term. fol (4 points) 42. 43. 44.

The duties, restraints and penalties prescribed in the Delaware charter, to which the "Susquehanna Bridge Company" are made "subject" by section 38 (folio 38,) are the duties, restraints and penalties imposed on the corporation and not on others for the benefit of the corporation.

Judge Wright Court of Appeals (4 points) fol 58. 63. 64.

Third--But whatever may have been the rights conferred upon the "Susquehanna Bridge Company" by the act of 1805, it is insisted that they were by no means conferred on the "Chenango Bridge Company," when it was separately incorporated by the act of 1808, for all that was sought to be con-

ferred on it was contained in the 4th section of the act of 1808, and is as follows: (folio 43,) "Under all the provisions, regulations, restrictions, clauses and provisions of the beforementioned Susquehanna Bridge Company," &c.

To regard this general language as first bringing from the *east* and *west* branches of the Delaware to the Susquehanna Company, a provision as to what it should not be lawful for any person or persons to do, and then as bringing it from the Susquehanna Company, and incorporating in the charter of the Chenango Bridge Company, a clause that "it shall not be lawful for any person or persons to erect any Bridge or establish any ferry across the *'west'* and *'east'* branches of the Delaware River, within two miles, either above or *below* the bridge, and make it read so as to apply to the Chenango River, with a single stream two miles above, and one-fourth of a mile (its entire extent) below, and then apply to the Susquehanna for one mile and three-fourths further down, and at the same time get rid of the thirty years limitation in the Delaware charter, would, it is submitted, be going an unusual and irrational stretch beyond all ordinary rules of construction in such cases; and would be sufficiently far-fetched to satisfy the cravings of a corporation which seeks thus to establish its right to an eternity of monopoly, and thirty-five per cent. dividends.

Fourth—Again: By the act of 1805, in the incorporation of the Delaware Bridge Company, it was provided by section 36, (folio 37,) that at the expiration of thirty years the Bridge should become the property of the people of this State.

The 38th section of the same act of 1805, (folio 38) incor-

Further the clauses incorporating the Susquehanna & the Chenango separately go back in terms to the "rights privileges" in But Susquehanna is for sole purpose of Bridge and Chenango a new corporation. The Delaware streams were in a secluded section and gave high promise of remaining so. Is it probable the Legislature really intended to limit them and give the Chenango Charter without limit where a great thoroughfare was certain?

* See Judge Gray's finding Case fol. 89. - Wright 62-63 huge points.

Brief costing $8800.

porates the Susquehanna Bridge Company, "subject to all the duties, regulations, restraints and penalties" of the Delaware Company, and declares that "all and singular the provisions, sections and clauses thereof, not inconsistent, &c., shall be fully extended," &c., to the Susquehanna Company.

We have already seen that the Delaware charter had a limitation of thirty years, which was extended to the Susquehanna charter.

The third section of the act of 1808, (folio 43,) declares that the "Susquehanna Bridge Company" shall thereafter exist for the sole purpose of constructing a Bridge across the Susquehanna River at Oquago, and repeals the thirty years limitation upon its charter.

"Under all the present provisions" - not more - nothing about "advantages" &c

The fourth section of the same act, (folio 43,) incorporates the Chenango Bridge Company, in the following terms: "By the name and style of the Chenango Bridge Company, and as such to have perpetual succession under all the provisions, regulations, restrictions, clauses and provisions of the beforementioned Susquehanna Bridge Company, and their capital in stock shall be ten thousand dollars.

We therefore insist that the Chenango Company was modeled after the *then existing Susquehanna Company*, and not after it as the *bill pending proposed to make it*. That the "regulations, restrictions," &c., of the Susquehanna Company, under which the Chenango Company was incorporated, were the legal, then existing, regulations and restrictions upon the statute book, including the thirty years limitation, and not such as it was proposed to create by the bill then under consideration. The Susquehanna Bridge Company had a corpo-

rate existence, all the features of which were defined by law, and well understood when the bill was drawn, proposing to incorporate the Chenango Company. Suppose the section of the new bill as to the Susquehanna Company had been struck out and the Chenango section had been retained?—The provisions amending the charter of the Susquehanna Company, and repealing the thirty years limitation, are contained in the third section of the act of 1808, (folio 43.)

The fourth section of the same act incorporates the Chenango Company, and adopts the provisions of the Susquehanna Company. But, in referring to the Susquehanna Company, it does not say, the foregoing provisions relating to the Susquehanna Bridge Company, nor otherwise show the least intention to copy, refer to or adopt the proposed new provisions relating to said company, but it refers to it as the restrictions, &c., of the before-mentioned Susquehanna Bridge Company, which company was "before mentioned" by its corporate name, in the third section of the bill it was proposed to enact into a law. Now, "under" what parlicular regulations, restrictions, &c., of the before mentioned Susquehanna Bridge Company, was the Chenango Company incorporated; its legal existing provisions, or those it proposed to create? Clearly it was one or the other, and not both, and we hold it to be entirely clear that upon every legal or equitable principle of strict or even liberal construction, the regulations and restrictions of the before mentioned Susquehanna Bridge Company, were the legal provisions of the charter then existing by statute, and not provisions proposed to be created by the act under consideration.

We say the act of 1808, as to these charters, should read as follows: The Chenango Company shall be made as the Susquehanna Company now is by law. The thirty years limitation now on the charter of the Susquehanna, is hereby repealed.

But again, by the act of 1805, section 38, (folio 38,) the Susquehanna Company was created, and its powers defined, by adopting the Delaware charter. The act of 1808, section 3, (folio 43,) simply declares that the Susquehanna Bridge Company shall be deemed to exist for the sole purpose of maintaining a bridge, &c., under all its present provisions, except the thirty years limitation, which is repealed.

To contend that this reference to the "before-mentioned Susquehanna Bridge Company," in the clause incorporating the Chenango Bridge Company, gave the Chenango Company the benefit of the alleged exclusive monopolizing right contained in the Delaware charter, that it brought up its corporate life and muscle from the Delaware and Susquehanna charters, under the general phraseology before discussed, and that *in the same bill* it got rid of the thirty years limitation because there was a clause proposing to thus amend the act, upon or after which it was sought to be modeled, would be construing construction in search of odious privileges and 35 per cent. dividends.

If it is said that the clause in the act of 1808, incorporating the Chenango Company, declares that the corporators are to have "perpetual succession," &c., and that the phraseology must control the construction above contended for, it is answered :

First--That the clause in the act of 1805. which incorporates the Susquehanna Company, declares that the corporators shall have "perpetual succession," &c., and yet, there was a conceded limitation of thirty years upon this charter, which limitation was repealed in express terms by the act of 1808. This proves the sense in which this word "perpetual" was employed by the Legislature of that period. But,

Second—The word "perpetual," neither in its popular nor etymological sense necessarily means endless. It is derived from two Latin words, signifying "*to pass*," and is as frequently used to denote continued or continual, uninterrupted or unceasing, constant or constantly, as otherwise; and these words are all used in a qualified sense, such as perpetual conversation, perpetual flow of blood, perpetual beating of the heart, perpetual weeping, continual noise, uninterrupted discourse, unceasing attachment, constant pursuit, &c.. &c., all of which is intended to mean and does mean, that it is continued for some comparatively long period, either fixed or indefinite, without intermission. (See Webster and Worcester.)

If we are right in this construction, instead of having an exclusive and odious monopoly, the Chenango Bridge has for the last twenty years been the legitimate property of the people of the State of New York, has for all that time imposed its exactions upon travel by usurpation and without authority of law, and its corporators now, instead of seeking to prevent and destroy other facilities for transit, demanded by the public convenience and necessity, and force travel out of its channels, that it may levy enormous contributions upon wayfarers through all time, should be answering a *quo warranto*, filed by the Attorney General in explanation of their corporate pretentions, and be atoning for its transgressions, by refunding to the people the tolls its corporators have collected without right.

But the following enactment procured by the plaintiffs and passed by the legislature, shows that neither the plaintiffs nor the legislature believed that all the provisions of the Delaware charter were incorporated in the Chenango charter or were applicable. This is a *corporate* as well as a legisla-

tive construction in favor of defendants. If any provisions were brought up from the Delaware Bridge to the Chenango Bridge this must have been, but the legislature and plaintiffs say it was not by this act of explanation:

"LAWS OF NEW YORK, 66TH SESSION, 1843.

"Chapter 68, Page 43.

"AN ACT *to amend the act incorporating the Chenango Bridge Company.*

"Passed March 30, 1843, by a two-third vote.

"§ 1. That whenever, and as often as the bridge across the Chenango River, at Binghamton, (formerly Chenango Point,) provided for in the original act of incorporation of the Chenango Bridge Company, shall be rebuilt, the inspection of such bridge, and the certificate, as to the sufficiency of the construction and safety thereof, required to be made by the Judges of the Court of Common Pleas of the County of Delaware, may be made by the Judges of the Court of Common Pleas of the County of Broome, where said bridge is situate, or any three of them."

If the Delaware Charter so far as privileges were concerned was incorporated in the Chenango charter it was not necessary for the Delaware judges to act: the Broome judges were charged with the duty.

Again, the act incorporating Defendants is to be presumed to be constitutional, and must be so construed, unless clearly proved to be otherwise. Both acts should be so construed if possible, as to leave both constitutional and consistent.—The act incorporating defendants is a legislative construction of the charter of the Chenango Bridge Company, given upon the application of the plaintiffs, and shows the opinion of the legislature that it had no exclusive right.

Upon another and further view of the case, the defendants' come directly to the question of *contract*, and make the following:

POINTS.

I.

But suppose the phrase contended for, "it shall not be lawful," &c,. does apply to the Chenango Bridge, with all its original force, it does not make a contract, but is a mere legislative enactment, subject to repeal like any other statute, whenever the sovereign power of the State may choose. It has neither consideration nor mutuality, form or substance, nor any other primary element of a contract.

There must be a contract with an obligation, and the obligation must be impaired to entitle the party to relief. The obligation, is that part of the contract which binds the obligor to performance, and before the plaintiffs can claim judgment in this case, they must not only show a *contract*, with an *obligation*, resting on the State, but must show that the defendants' charter *impairs* the obligation.

The primary elements of a contract are defined to be :

First—a person able to contract ;
Second—a person capable to be contracted with ;
Third—a thing to be contracted for ;
Fourth—a good and sufficient consideration or *quid pro quo;*
Fifth—clear and explicit words to express the contract ;
Sixth—the assent of both contracting parties.

These are indispensable requisites, and whether between States or persons, natural or artificial, or between persons and States ; if any of these elements are wanting there is no valid contract.

The clause in question is neither more nor less than an item in an ordinary legislative enactment; it was the result of mere legislation and nothing else. There is no semblance of contract in it or round it, or about it, either in form or in substance.

The title of the act of 1805, is to establish a Turnpike corporation for improving and making a road from Oxford to Newburgh. It commences with the usual form of legislation, "*Be it enacted,*" *&c.* Its second section continues, "and be it further enacted," &c. It authorizes the taking of private property under the right of eminent domain, on the ground that its objects are public, and concludes by declaring in the last section that it is a "*public act,*" and yet the plaintiff's counsel gravely insist that it contains a *private contract* between the State and the Chenango Bridge Co.! If a contract, when was the consideration paid by the corporators, or agreed to be paid to the State? or where the mutuality of the undertaking?

The State simply incorporates the petitioners with certain rights, and authorizes them to erect and maintain a Bridge and collect tolls, and volunteers a provision that competition within two miles shall not be lawful. The corporators neither pay, nor agree to pay any thing; they neither do nor agree to do anything in consideration of the charter. They may erect a bridge or not erect it; when erected they may maintain it or not maintain it; if destroyed by decay or casualty, they may re-erect or not re-erect as they choose; in short, the corporators are not bound to do anything. They were not bound to erect it originally, and may now abandon it any day it suits their own convenience or caprice, regardless of the public interests or wishes; should it be carried away by flood or destroyed by fire or become wasted by decay and be

desire of obtaining
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only one is found.
so do we

Enumerate when
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under Legisla-
tive Control.

Might I say
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suffered to remain, what adequate remedy would the people of this State have upon their side of the "contract?" and what would be the form and substance of the action?

THERE WAS NO CONTRACT:

First—because there was no person on the part of the corporation to be contracted with, the corporation having been brought into inchoate existence by the act defining its rights, &c.

Second— because there was no consideration or mutuality.

Third—because there were no clear and explicit words expressing a contract, or showing that it was the intention of the parties to express one.

And Fourth—because the legislature had no power to make *such* a contract as is contended for on the part of the plaintiff.

That such enactments, there being no exclusion of the power of the Legislature, merely operate to exclude individuals and corporations,—that they do not prohibit the Legislature from the exercise of its sovereign authority in granting further facilities when required by public necessities, and that they may be repealed and modified at the pleasure of the Legislature, see

Mohawk Bridge Co. vs. the Utica & Shenectady Rail Road, 6 Paige, 554, where Chancellor Walworth says: "The Legislature has indeed protected the Mohawk Bridge Company in the enjoyment of an exclusive right to carry passengers across the river at Schenectady, &c., but, it has not deprived a future Legislature of the right to authorize the erection of another bridge within the prescribed limits, whenever the

public good shall appear to demand it." The Chancellor reiterated this principle in Oswego Falls Bridge vs. Fish, 1 Barb. Ch. R., 547.

In Thompson vs. New York & Harlem Rail Road Co., 3d Sandford's Ch. Rep., 625, where the plaintiff's charter contained a clause like that of the Chenango Bridge charter, declaring that "it shall not be lawful for any person or persons whatsoever to erect or cause to be erected," &c. The defendants erected a bridge under a subsequent act of the legislature within the prescribed limits, and upon bill filed for relief, Vice Chancellor Sandford, one of the best equity lawyers in the State, upon a review of all the cases held that the act of 1790 (giving the plaintiffs charter,) "did not declare that the legislature would not permit the erection of another bridge," &c., and that the Legislature might lawfully grant the new charter.

In the case of Lansing vs. Smith, 4 Wendell, 9, in the Court for the correction of Errors, in a controversy between the ancient wharf and subsequent pier owners, where the language of the act under which the wharf owners claimed was, "that no such grant shall be made in pursuance of this act to any person other than the proprietors of the adjacent lands." Chancellor Walworth holds, that the legislature had control over the matter, and might give other facilities for the benefit of commerce, and says, "it never could have been intended as a restriction upon the power of the legislature," and in deciding between the wharf and pier owners, the court held that it was not.

The same doctrine was declared in Gould vs. Hudson River Rail Road, 2d Selden, 522, in the Court of Appeals, and

by the Supreme Court of the second district, upon elaborate consideration, in the matter of Hamilton Avenue, 14 Barbour, 405, the same principle was held.

That the words of the act do not amount to a contract, see cases above cited. Also

East Hartford vs. Hartford Bridge Co., 10 Howard, 511.

West River Bridge Company vs. Dix, 6 Howard, 529.

Tuckahoe Canal Co., vs. James River R. R. Co. 11 Leigh. 42.

Ohio Life and Trust Co. vs. Debolt, 16 How. 427.

Opinion of Ch. J. Taney.

In Charles River Bridge, where

He says,—"The grant of privileges to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms: * * by words too plain to be mistaken. * * Nor does the rule rest merely on the authority of adjudged cases. It is founded on principles of justice and is necessary for the safety and preservation of every State in the Union."

Again he continues: "It would present a singular spectacle, if, while the courts in England are restraining within the strictest limits the spirit of monopoly and exclusive privilege in the nature of monopolies, and confining corporations to the privileges plainly given to them in their charter, the courts in this country should be found enlarging these privileges by implication; and construing a statute more unfavorably to the public and to the rights of the community than would be done in a like case in an English Court of Justice.

And after premising that those who accept charters, have

full opportunity to examine and consider the provisions before they invest their money, (and if he had said, *usually draw the charter themselves, he would* not have over-stated it,) he adds :

"And if individuals choose to accept a charter in which the words are susceptible of different meanings,--or might have been considered by the representatives of the State *as words of legislation only*, and subject to future revision and repeal, and not as words of contract--the parties who accept it, have no just right to call upon this Court to exercise its high power over a State upon doubtful or ambiguous words, nor upon any supposed equitable construction or inferences based upon other provisions in its act of incorporation."

The same principle was held in

Richmond Road vs. Louisa Road, 13 Howard, 71.

Pennsylvania Railroad Company vs. Canal Commissioners, 21 Pa. State Rep. 22.

In this case Black, J., says,—"When the State means to clothe a corporate body with a portion of her sovereignty, and to disarm herself to that extent of the power that belongs to her, it is so easy to say so, that we will never believe it to be meant when it is not said. * * In the construction of a charter to be in doubt is to be resolved, and every resolution which springs from doubt is against the corporation. If the usefulness of the company would be increased by extending them, (privileges) let the legislature see to it, but remember that nothing but plain English words will do it." See also

Milan Plank Road Company vs. Husted, Sup. Court of Ohio, 4 Am. Law Reg., 513.

In Dartmouth College vs. Woodward, 4 Wheaton 625, Ch. J. Marshall says, "on more than one occasion this Court has declared that in no doubtful case would it pronounce a legislative act contrary to the constitution."

The case of The Boston & Lowell Railroad vs. The Salem & Lowell Railroad, 2 Gray 9, is often cited to prove the doctrine contended for by the plaintiff in error, but no such principle can be found in it. It is *strictly in harmony* with the doctrine insisted on by the defendant in error, and with the decisions cited. It was a case where the Legislature in *express and plain terms excluded itself*. This charter contains the express provision "that no other Rail Road than the one hereby granted shall, within thirty years from and after the passing of this act, be authorized to be made, leading from Boston, Charlestown or Cambridge to Lowell." Besides the legislature reserved the power in the charter, to regulate the tolls, and the right to purchase the road upon certain prescribed terms, &c., thus retaining the right to take the corporate property at a stipulated sum. Here was an exclusion for a limited period only, and upon terms and for a consideration stipulated between the legislative power on the one hand, and the corporation on the other, and the case has no bearing upon, and is no authority in the case of the Chenango Bridge Company.

Chief Justice Shaw in giving the opinion of the Court and speaking of the 12th section of the plaintiffs' charter says:

"It was certainly a stipulation on the part of the Government regulating *its own conduct* and *putting a restraint upon its own power* to authorize any other Railroad to be built, &c. It was therefore equivalent to a covenant of quiet enjoyment *against its own acts* and *those of persons claiming under it*. This is in fact all the Government could stipulate."

After reciting carefully the stipulations he further says:— "*We are therefore of opinion that under this form of words, that no other Railroad should be authorized to be made for thirty years*, the government, as far as it was in their power, intend-

ed to engage with the corporation that no other direct Rail Road between Boston and Lowell should be legally made, &c.

The Dartmouth College case which has done much *legitimate* and *much extra* service, and has been invoked for almost every species of absurd pretension, is as usual, in the absence of anything in point, pressed into this. But there is no relation whatsoever between the cases.

In the Dartmouth College case a royal charter had been granted to a number of persons incorporating them as a religious and literary institution. Large donations were made to it,—it had the power to fill vacancies in the board of its trustees to manage its funds, &c. The legislature largely increased the number of trustees and provided a different mode for the appointment of persons to have charge of the trust funds, &c. The court found no difficulty in holding that a contract had been made and its obligations violated.

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Many cases may be found in this and other states, &c., where it has been held that when the legislature had made a contract in terms *excluding itself from authorizing* a rival work within defined limits, that a law authorizing such rival work within prescribed limits would be unconstitutional, and that the privileged corporation could have relief against it in equity :

But not one of respectable authority can be found any where, which holds that a legislative contract, disposing of a State's sovereignty, can be recognized by implication, or that mere every day legislative phraseology such as this, constitutes a contract.

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Mr. Justice Story said "it shall not be lawful to erect any other College in New Hampshire"?

legislation. All such lamentation may be spared, if Courts will adhere rigidly to their own salutary precedents, so often laid down by the great lights of the law, and becoming every day more important and more necessary,—not to spell out of language employed and intended for mere legislative enactments, contracts, which sap the very foundation of popular rights, and cripple and fetter a State's sovereignty and make it the servant of its own corporate creation

The reading of the *whole* section in contest, shows that the words were not intended as words of contract, but of mere prohibitory legislation. It makes it an "offence" to build a bridge, or erect a ferry, &c., or to cross the bridge without paying toll.

SECTION XXXI. *And be it further enacted*, That it shall not be lawful for any person or persons to erect any bridge or establish any ferry across the said west and east branches of Delaware river within two miles either above or below the bridges, to be erected and maintained in pursuance of this act, except between the times the said bridges or either of them shall not be passible, or forcibly to pass the said bridges or either of them without having previously paid the toll gathorer, for the use of the said corporation, the toll hereby established for crossing the said bridges, but that every such person or persons shall, for every such last offence or injury, forfeit and pay for the use of the said corporation, the sum of ten dollars, to be recovered by the said corporation, to their use in an action of debt, with costs of suit, in any court having cognizance thereof: *Provided, nevertheless*, That nothing herein contained shall be construed to prevent any person residing within two miles of the said bridges from crossing the said river to or from his or her house or land with his or her own boat or craft without being subject to the payment of any toll.

The plain reading of the above section is this:—It shall not be lawful, so long as this enactment stands, to erect a competing bridge or ferry, or to cross this bridge forcibly, without paying toll. For the *first* "*offence*" the injured party is left to such equitable and legal remedies as the law provides: For the *second* "*offence*," a penalty of ten dollars is herein prescribed. Crossing on their own land, no "*offence*."

II.

The Chenango is a fresh water stream, where the tide does not ebb and flow,—not navigable except for arks and rafts in freshets, and was to all intents and purposes a *private river*, subject to the public casement as a highway. The riparian proprietors might establish bridges, or ferries at such points as they pleased, unless restrained by legislation: and, the statutes had as early as 1797, authorized the construction of highways and bridges by superintendants and commissioners, had forbidden the use of ferries for hire, unless duly authorized, and had given Courts of Common Pleas power to license them at such points as they might think proper. The provisions therefore in the Delaware charter, that "it shall not be lawful for any person or persons to erect any bridge or establish any ferry across, &c.," was intended to apply to *private persons*,—(*except* as they were *specially excepted*.) to Superintendents and commissioners of *highways*, and to prohibit Courts of Common Pleas, from licensing ferries, so long as the law in *that shape* should remain in force.

The restructive section therefore has significant meaning, an apt and natural application and full force if held to be *no restriction upon legislative power.*

This corporation had a pledge of legislative faith to "*this* extent no more." How well it has been kept, the record shows. For nearly half a century the company has divided some thirty five per cent. upon the capital invested. No other bridge was very seriously demanded until within a few

years, and when it is demanded and its necessity shown and is urged and granted, this corporation, insists *that if its exclusive right was questionable originally, that it is no longer so, because a competitor did not come sooner!*

The Co. has
erected 3 Bridg.
1 in 1808
1 in 1808
cost not known
1 in 1825 cost
$3500 - 1 in
1843 cost
$4500.
Quite cost.
In error
for 66

AGAIN. The bridge was built in 1808. This suit was tried in 1857. The bridge cost from $3,500 to $4,500, and that amount was all *that was paid in.* Dividends have been made upon the whole $100,000 capital stock (see folio 66.) None appear for nineteen years, but this statement will approximate the facts. Throw off nine years, and call the time forty years, and the cost of the bridge, (amount paid in,)...$4,500

Am't. annual dividend of 35 per cent	1,575
For 40 years without compounding	68,000
Deduct 10 per cent. dividends for 40 years	18,000
Leaving in excess of 10 per cent dividends for 40 years without compounding	45,000!

That the Legislature may in matters, the legitimate subject of *bargain and sale,* by enactments framed for that purpose, and showing *a clear intent to that end,* enter into engagements or contracts is conceded. But, that the common legislative parlance and every day phrases of legislation may be or should be, or can justly be, *spelled out and construed, in aid of monopoly, and in defiance of sovereign power and popular right we deny with emphasis.*

It should be remembered that the legislative provision in this case, which the plaintiff in error dignifies as a "contract," was originally placed in the Delaware charter, when its duration was limited, in a separate section, to *thirty years*: that the Susquehanna charter was borrowed from the Delaware charter,—*the thirty years limitation included;* and, that,

as contended by the plaintiff in error, by a single stroke of subsequent legislation, the Chenango charter was spoken into its present existence,—that both the Susquehanna and Chenango charters, in this same bill, gained separate and independent being,—that they severally retained the exclusive right of the Delaware charter for "two miles above and below" their bridges to be constructed respectively, &c., and, that both and each, *escaped from the limitation* together, and gained an eternity of existence and retained each an endless contract—giving the Chenango charter 35 per cent. income per annum in defiance of all State authority.

Does any one believe that any such thing was either understood or intended by the Legislature by the employment of these words, used daily, to prevent the catching of suckers and bullpout, in streams, and found only in another charter of numerous sections and of former years.

This legislative phraseology, called a contract, coming down to the Chenango charter under such circumstances,—such a multiplicity of provision, mixed up with over half a dozen corporations, some coming, some going, such a confusion of legislative tongues,—such a jargon of tangled phrases, present reasons why the language claimed to be a contract, should, in its application to the Chenango charter, and in its meaning, if placed there, be read with more than ordinary care, and be construed according to the strictest rules relating to implied legislative contracts and perpetual monopolies.

The case of the Passaic and Hackensack Bridge vs. The Hoboken Improvement Co., so far as it has application, confirms the grounds taken by the defendant in error. That

case turned upon the question whether a Railroad bridge was a competing bridge, within the meaning of the act of 1790, and it was held it was not. The prohibitory act in that case (§15,) provided that "it shall not be lawful for any person or persons whatsoever, to erect or cause to be erected, any other bridge or bridges," &c., the same as in the Delaware charter. The same act also appointed commissioners to make a contract for the erection of the bridges, and leasing them, &c. Under this act, commissioners were appointed, and a mutual covenant was made, with elaborate detail, and signed, sealed and delivered by the respective parties.

This was a contract, and the complainants claimed, as they well might, that the "act of the New Jersey Legislature and the agreement made under it, constituted a contract," &c.

THE WORDS ARE NOT THE WORDS OF A CONTRACT.

The words 'it shall not be lawful," &c., are as common in Legislation as the words, "be it enacted and be it further enacted." The phrase "it shall be lawful" or "it shall and may be lawful" and "it shall not be lawful," may be found upon almost every page of our statute and session laws—commencing with our Colonial Legislature and coming down to the last session. The former phrase runs through the entire act, now under consideration. One is employed to grant liberty to *any person* or *persons*, and the other to restrain them. So these phrases are employed and understood.

A few specimens of the early and of the modern times, are collected here, to show how freely and how generally the words in the restraining phrase, "*it shall not be lawful*," &c. have been employed in our legislation and to show in what sense they were evidently intended.

The early acts may be found in Greenleaf's and other editions, and they are all compiled in the Revised Laws of 1813, from which we quote.

"An act for regulating the trial of issues, &c.—Vol. 1, §1X.

That *it shall not be lawful* for more than thirty-six nor less than twenty-four jurors to be summoned, &c.

An act to regulate highways in the counties of Suffolk and Kings, contained in 2 Rev. Laws of 1813, p. 304, § III.

It shall not be lawful for the said commissioners or any of them, to lay out any road through any persons land without the consent of the owners thereof on paying the true value, &c.

For the better prevention of *fires*.—p. 364, § LXVI.

That it shall not be lawful for any person or persons to have or keep any quantity of gunpowder exceeding 25 lbs. weight in one place.

An act declaring certain rivers public highways.—p. 288 § VII.

That it shall not be lawful for any person or persons to draw a seine or use a net within any of the said creeks, &c..

§ X. *That it shall not be lawful for any person or persons to draw a seine in the Chatauqua Lake, &c.*

An act to give relief in cases of insolvency.—p. 477, § XXVIII.

It shall not be lawful for the State Printer to demand more than $2,50, &c.

An act to prevent stock jobbing.—p. 181, § XIII.

That it shall not be lawful for any person whomsoever, to sell at public auction or vendue any public securities or stock.

An act to prevent Lotteries.—p. 160, § VIII.

That it shall not be lawful for any person or persons whomsoever, to sell the chance or chances of any ticket, &c.

An act relating to the fishing in certain waters.—p. 238, §I.

That it shall not be lawful for any persons to draw any seine set any net, &c., in the following rivers running into Lake Ontario, &c.

§ II. *That it shall not be lawful* for any person to make any dam across any part of the said rivers, &c.

§ V. *That it shall not be lawful* for any person to fish with a net or seine in Otsego Lake, &c.

§ XI. *That it shall not be lawful* for any person to stake off any Oyster bed on the west or south side of Staten Island, &c.

§ XIII. That it shall not be lawful for any person or persons to take or catch any fish called *trout* or *suckers*, &c.

Modern legislation clings with some tenacity to this charmed phrase, with occasional variation to suit the progress of the times.

The following is from the Legislation of 1862:

An act to facilitate the ingress of Salmon into Cayuga Lake, &c.—Session Laws of 1862, page 385.

§ 3 *It shall not be lawful* for any person to spear or in any manner catch or destroy any salmon while passing up said apron or aprons, &c.

An act to prevent animals from running at large.—Same volume, p. 844.

§ It shall not be lawful for any horses, cattle, sheep and swine to run at large in any public highway, &c.

An act to regulate the use of public highways.—Same volume, p. 262.

§ I. It shall not be lawful for any owner or owners of any wild or rare animal, native or imported, which shall be used for exhibition in any menagerie or show, or owned or possessed for the purpose of so exhibiting the same, to convey or cause to be conveyed, or led, or driven over, through or upon any public highway or street, such wild or rare animal, unless such owner or owners shall send before the same, a person of mature age, at least one-half a mile in advance to notify and warn persons traveling or using said highway, road or street with horses or other domestic animals, liable to be frightened by such wild or rare animal, of the approach of such animal."

If there is any case where such language is held to be an irrevocable contract, it should be where it protects the public from alarm from such "*rare* and *wild* animals, *native* or *imported*!"

THE APPLICATION OF THE DELAWARE CHARTER, IN ANOTHER VIEW.

Did the Legislature and the plaintiffs' in error intend to prohibit the erection of a Bridge which would increase the travel on the Chenango Bridge? If not, then the two miles "above and below," in the Delaware Charter certainly has no application.

The prohibitory language is "That it shall *not be lawful* for any person or persons to erect any Bridge or establish any ferry across the said west and east branches of Delaware river, either above or *below* the bridge, to be erected and maintained in pursuance of this act, &c."

~~By reference to the sketch~~ *It* will be seen that a Bridge across the Susquehanna at any point within two miles *below* the Chenango Bridge would, in the natural course of things, draw travel to it and greatly increase its revenues. It would open to it the travel to and from a large section of Southern New York and Northern Pennsylvania which nothing but a Bridge across the Susquehanna *below* the Chenango Bridge could ever give it, and this is seen by a mere glance at the map showing the course of the river and the location of the town.

If the Legislature had said *twenty miles above and below*, in the Delaware charter, and it had then been sought to make it applicable to the Chenango Bridge with rivers of entirely different configuration, where would it have carried us?—Blocked a river, *clearly* not intended

LEGISLATIVE POWER.

We have already conceded that the Legislature might enter into agreements, in matters the legitimate subject of disposition, by an express and clear manifestation of its intention to do so. We admit that a State may sell all it has to sell which is the subject of bargain. But sovereignty is its vital power—its heart, its life blood and cannot be vended in the exchange.

As a question of legislative power let it be tested. If the Legislature can dispose of it for four miles, it can for four hundred, and when the principle is admitted, it is only curbed by the slender rein of Legislative discretion. The Chenango, from its source to its mouth, is nearly 100 miles in length. If the Legislature had extended the restriction over the whole, the question in all its legal relations would have been the same and this shows where the doctrine leads.

A State is the guardian and not the exchange broker of popular rights, it is erected to be the protector and not the auctioneer of the lives, liberty, and property of the people ; it is the creature and not the creator of man and in none of its attributes is it invested with power to oppress.

It is a well recognized rule that when the agent transcends his authority, his acts do not bind his principal, and this rule is as well applicable to States and corporations as to natural persons ; and if in this case, the legislature had sought to have tied up future legislation, which we insist it did not intend or think of it went beyond the province of legislation, and its acts were unauthorized and void.

As a fundamental principle of Government, we hold that

one legislature cannot place the sovereignty of the State or any part or portion of it beyond the reach of succeeding ones.

The legislative power of the State is vested in the legislature in general terms, and extends to every legitimate subject of legislation pertaining to civil government. But that power in which the supremacy of the government rests, remains undiminished.

The attempt to make a contract disposing forever of a portion of a State's sovereignty, is an assumption of power not legislative in its nature and therefore void.

The power of self-preservation and advancement was neither surrendered nor impaired by the States in adopting the Constitution, and the most sanctimonious regard for the obligation of corporation contracts, is compelled to recognize the existence of the principle, and admits its justice; and in the making of contracts, whether by or between States or individuals, they are made in subordination to this fundamental law and must yield obedience to its salutary behests.

IS DEFENDANTS' CHARTER UNCONSTITUTIONAL BECAUSE NO COMPENSATION WAS PROVIDED FOR PLAINTIFFS'?

But, again, it has been said that if the charter was not such a contract as was contemplated by the 10th section of the 1st article of the Constitution of the United States, inasmuch as it provides no compensation for the plaintiffs' injury, it is in violation of the 5th article of the amended Constitution of the United States, and of the 6th section of article 1st of the Constitution of this State, declaring that "private property shall not be taken for public use without just compensation."

This proposition, insisting that private property is taken for public use, and that which insisted that the "obligations of a contract" had been impaired, are entirely separate and distinct propositions.

We have disposed of one and now proceed to the other. If the Bridge had been taken or even their franchise destroyed, it would have presented a case where private property was taken within the rule, but now it does not.

The plaintiffs in error, insist that "their property" has been thus taken, because the construction of the Binghamton Bridge, by opening another crossing place over the Chenango River, has taken money, not from them, but out of the pockets of the traveling public, which they might have received, but for such new erection; and that hereafter the new bridge will continue to take "their property" from the pockets of the public, where it is deposited; if the public travel and do not choose to go out of their way to cross the Chenango Bridge. This "private property" of the plaintiffs in the pockets of the public, they insist is taken by the defendants, or is to be taken if the people happen to travel, not for the use of the defendants to be sure, but for 'public use," and hence they insist that the act incorporating the defendants was unauthorized and void, because it did not provide for their compensation, by the defendants, for such money as they might collect of the people for the public use. It is not pretended that there has been any appropriation of, or interference with the tangible property of the plaintiffs, or any appropriation of, or interference with their franchise, except, that by this mere facility for the accommodation of travel, some of the travel which would have been forced across the Chenango bridge, now goes another way, and thus does not bring to the plaintiffs all the tolls they would other-

wise have received. This right was *eminent domain*,—belonged to the *sovereign* and was not and never could be *private property*. We are considering this as applicable to *two miles* above and below, but the question would be the same if it was two hundred miles.

It is Damnum Absque Injuria.

Whatever real injury the plaintiffs may have sustained, consequentially, by reason of the erection of the defendants' bridge it was *damnum absque injuria*. This rule may operate oppressively in some cases, but the law looks to the advancement and interests of the whole, and not the interests of a few. It is an inconvenience to which individuals must submit, in return for the social benefit which society confers. It has been repeatedly held that laws authorizing a new bridge, or line of travel, which consequently impairs the value of previous ones, are not unconstitutional, although no compensation is provided. The law making power may undoubtedly annex such a condition, in cases where it is deemed just and equitable, but this rests in Legislative discretion, and the law authorizing the new work is as valid and constitutional when no provision is made as where it is. The Legislature may *extend* or *shorten* the protecting distance, as in its judgment justice may demand or convenience or necessity require. It may repeal it altogether and place no other privilege there ; or, it may authorize new bridges or ferries, with or without compensation. The whole rests in public faith and legislative discretion.

This doctrine will be found in the case of the Charles River Bridge, already cited ; in Callendar vs. Marsh, 1 Pick. 430 ; in the matter of Hamilton Avenue, 14 Barb. 405 ; in Thursten vs. Hancock, 12 Mass. 220, and Lansing vs. Smith, 4 Wendell 9. Besides, it has been recently decided in our court of dernier resort upon a review of all the cases, in Radcliff's Executors vs. the Mayor of Brooklyn, 4 Comstock

195. In that case Judge Bronson, who delivered the only opinion, says, "and a law which authorizes a new bridge near to and on the same line of travel with an existing toll bridge, and which in its consequences destroys the whole value of the old franchise, is constitutional, although it makes no provision for paying damage to the owners of the old bridge." The same principle, too, was held in Gould vs. Hudson River Railroad, 2d Selden 522. Nor can any well considered case, state or federal, be found to hold otherwise. The case of the West River Bridge vs. Dix and others, 6 Howard was a case where the injury was direct and tangible. Where the plaintiff's bridge was taken bodily as it stood, for the purpose of a free bridge, to accommodate a new highway; under circumstances, too, where the whole value of both structure and franchise was either taken or destroyed and broken up. In this case the court very properly held that it was the "taking of private property," and that the plaintiffs were entitled to compensation.

In attempting to maintain the repudiated doctrine contended for by the plaintiffs, Mr. Justice McLean, in the Charles River Bridge case, observes, 'the legislature cannot bring a citizen to the block; may it open his arteries? It cannot cut off his head; may it bleed him to death?" This suggestion of the learned and lamented Judge may be answered by one more applicable. The legislature may not enslave its free citizens, or tax their time or means except for the support of Government. May it and must it for endless generations "bleed" whole communities, consume their time and toil, by forcing their ordinary intercourse and business, through remote, inconvenient and devious lines of travel, for the benefit of a corporation? And when this direct and appropriate question is answered, the figurative interrogatory of the learned Judge will find its solution in the same response.

Vested Rights.

The question of mere "vested rights" has nothing to do with it. The plaintiffs are only entitled to relief for having the obligations of a contract impaired. In the discussion of the celebrated case of Charles River Bridge vs. Warren Bridge, 11 Peters, 536, Chief Justice Taney cites the opinion of the Court in Watson vs. Mercer, 8 Peters, 110, which says: "It is clear that this court has no right to pronounce an act of the State Legislature void, as contrary to the Constitution of the United States, from the mere fact that it divests antecedent vested rights of property." He continues, (page 540,) "the plaintiffs in error cannot sustain themselves here, &c., upon the ground that 'vested rights have been divested by the legislature.' They must show that the title which they claim was acquired by contract, and that the terms of that contract have been violated." "In other words, they must show that the State had entered into a contract with them not to establish a free bridge, &c." Such, and such only are the principles upon which the plaintiff can claim relief in this case."

Conclusion.

In conclusion, the defendants in error, submit that they have established the following general propositions:

1st—That the prohibition for two miles above and below the Delaware Bridge was not extended and does not apply to the Chenango Bridge Company, by its charter or otherwise.

2d—That such prohibition was only *upon person or persons* until such time as the Legislature should believe the public necessities demanded additional facilities, and was in no sense a promise excluding or an agreement to exclude further leg-

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Justice Watson says in the Supreme Court of New York in People v. Morris 11. Wendell that vested rights are appealed to when there is no written agreement

slation, or the granting of other charters for the promotion of the public good ; and further, that such clause was in no ense a contract within the meaning of the Constitution of he United States, containing an "obligation" which was "impaired" by the act granting the defendants charter.

3d—That the injury complained of by the plaintiffs in rror, was and will be entirely consequential ; that the plaintiffs in error have had no property, either private or public, aken, or proposed to be taken by the act chartering the defendants in error, or by the proceedings of the defendants in rror under it, within the meaning of the constitutional prohibition, &c., and that the plaintiffs in error had no right or laim to compensation, except such as vested in legislative iscretion, and was passed upon and rejected.

The judgment therefore of the State Court, should be affirmed with costs.

D. S. DICKINSON,
Attorney and of Counsel for Def'ts. in Error.

APPENDIX.

Opinion of Supreme Court at General Term, affirming the judgment at Special Term.

SUPREME COURT.

THE CHENANGO BRIDGE COMPANY,
agt.
THE BINGHAMTON BRIDGE COMPANY.

MASON, J.—I shall assume the Law to be that if that provision in the charter of the Delaware Bridge Company which declares "that it shall not be lawful for any person to erect a bridge or establish a ferry within two miles either above or below the bridges to be erected and maintained in pursuance of that act" are carried into the plaintiff's charter, that the act of the legislature conferring upon the defendants their franchize is unconstitutional and this suit to restrain the defendants is well brought and the judgment of the Special term must be reversed Livingston vs. Van Ingen, 9 J. R., 507, 585, 589 ; Boston & Lowell R. R. Co., vs. Salem & Lowell R. R. Co., 2 Gray's R.. 1 ; Fletcher vs. Peck, 6 Cranch R., 109 ; The Mohawk R. Bridge Co., vs. The Utica & Schenectady R. R. Co., 6 Paige R, 555 ; The Charles River Bridge Co,, vs. The Warren Bridge Co., 11 Peter's R., 420 ; The Oswego Falls Bridge Co., vs. Fish & others, 1 Barb. Ch. R. 547 ; Thompson vs. The N. Y. & Harlem R. R. Co., 3 Sand, S. C. R., 657 ; 3 Duer R., 146 ; 4 Wheat, R., 518 ; 2 Parson on contracts 513, 523 ; 6 How. U. S. R., 507 ; 13 How. U. S. R , 83. Such a grant with such a prohibition is regarded by our courts as a contract between the Government and the corporators the obligations of which are protected by the 10 Sec. of the first Act of the court of the U. S. and are beyond the power of the legislative interference.

The important question in this case is first whether this prohibitory clause in the charter of the Delaware Bridge

islation, or the granting of other charters for the promotion of the public good ; and further, that such clause was in no sense a contract within the meaning of the Constitution of the United States, containing an "obligation" which was "impaired" by the act granting the defendants charter.

3d—That the injury complained of by the plaintiffs in error, was and will be entirely consequential ; that the plaintiffs in error have had no property, either private or public, taken, or proposed to be taken by the act chartering the defendants in error, or by the proceedings of the defendants in error under it, within the meaning of the constitutional prohibition, &c., and that the plaintiffs in error had no right or claim to compensation, except such as vested in legislative discretion, and was passed upon and rejected.

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The important question in this case is first whether this prohibitory clause in the charter of the Delaware Bridge

Co., declaring it unlawful to erect any other bridge or ferry within the distance of two miles either above or below said Delaware bridges is carried into the plaintiffs charter and secondly, whether it carries such prohibition into plaintiffs' charter, in regard to the Chenango River for two miles above and below the plaintiffs bridge. I take it to be very clear that the plaintiffs charter gives them no right to the bridge to be erected under the act over the east and west branches of the Delaware river and as they had no right to any of the emoluments of either of the Delaware bridges, they of course did not take this prohibition in regard to the two branches of the Delaware. The real question in the case then is whether this prohibition of two miles up and down the stream is carried into the plaintiff's charter and made applicable to the Chenango River over which the plaintiffs have erected their bridge under their charter. The determination of the question necessarily involves the examination of the acts chartering these three bridge companies to wit: the Delaware Bridge Co., the Susquehanna Bridge, and the Chenango Co. I have examined these acts with a considerable degree of care and am constrained to say after the best reflection I have been able to bestow upon them, that I do not think the plaintiffs' charter grants to them this exclusive prohibition in regard to the Chenango river.

In the first place I do not think that the 38 Sec. of the act of 1805 which incorporated the plaintiffs under the name of the Susquehanna Bridge Co. conferred any such exclusive prohibitory right upon them. Nor does the act of 1808 which incorporated them under the name of Chenango Bridge Co. These acts purport in terms to confer upon the plaintiffs all and singular the provisions, sections and clauses contained in the charter of the Delaware bridge Co. which were not inconsistent with the particular provisions contained in the acts in regard to the Susquehanna & Chenango bridge companies. Now it seems to me that this prohibitory clause in the Delaware charter expressly includes the two branches of the Delaware, to wit: the "East and West" branch, and

as the Chenango river is but a single stream that this clause therefore, must be regarded as inconsistent and inapplicable to the plaintiffs' charter, and besides this clause was inapplicable to the stream over which the plaintiffs' erected their bridge in another respect as the Chenango river only extended about one hundred rods below the point where the plaintiffs contemplated erecting and where they did actually erect their bridge.

The whole strength of the plaintiffs' case upon this point is, not that it carried this clause of the Delaware Bridge Co. into the plaintiffs' charter in terms, but that it impliedly carried a prohibition in regard to the Chenango river of equal distance above and below the plaintiffs' bridge.—There are several reasons why this cannot be. In the first place, the grant of privileges to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms. Ohio Life & Trust Co. vs. Debolt, 16 How. U. S. R. 427, ; Richmond road vs. Louis road, 13 How. U. S. R. 7 ; Pennsylvania R. R. Co. vs. Canal Comrs. 21 ; Penn. R. 22 ; Milan plank road Co. vs. Husted, 4 Am. Law Reg. 213 ; 11 Peter's U. S. R. 544 ; 6 Paige R. 555.

In such cases nothing is derived from the public by implication, and any ambiguity in the terms of the surrender must operate against those claiming under it. Stourbridge Canal vs. Wheeling and others, 2 Barn. & Adolp. 792. Now the act of April 1st. 1808, which incorporates the plaintiffs, declares that the Susquehanna Bridge Co. shall hereafter be deemed and considered to exist for the sole purpose of erecting and maintaining a toll bridge under their said charter, across the Susquehanna at Oquago, under all its present provisions except the limitation of 30 years, &c.

It seems to me therefore, that whatever may have been the right originally conferred upon the Susquehanna Bridge Co. by the act of 1805, that they were not by any means neces-

sarily conferred on the Chenango Bridge, when it was separately incorporated by the act of 1808, for all that is pretended to be conferred on the Chenango Bridge Co. is found in the 4th Sec., which is as follows: "that it shall have perpetual succession under all the provisions, regulations, restrictions, clauses and provisions of the Susquehanna Co.," and as there is nothing in the charter of the Susquehanna Bridge Co. which expressly amounts to a prohibition, or in other words, no express clause or prohibition. I do not see how it can be said that this prohibition is incorporated into the plaintiffs' charter. If any of these general clauses in the Susquehanna charter can be said to carry this prohibitory clause of the Delaware charter into it by implication that does not help the plaintiffs, for it can hardly be said that this general language in the charter of the Chenango Bridge Co. shall be deemed to embrace any thing more than the express clauses and provisions of the Susquehanna charter, and if so, it is very clear that the plaintiffs have no such exclusive right in regard to bridging the Chenango river at Binghamton as they contend. *And the very fact that we found ourselves doubting whether the plaintiffs have got the right under their charter after a careful examination of these several acts is a sufficient reason why we should decide against the plaintiffs in the case for it was well said by Chief J. Black, in the case of the Pennsylvania R. R. Co. vs. Canal Comrs.*, 21 *Penn. R* 22, "*that to be in doubt upon such a question is to be resolved, for every resolution which springs from doubt is against the corporation.*" I am of the opinion for the reasons above stated, as well as for reasons stated by Justice Gray, in his decision at Special term that the judgment appealed from should be affirmed.

IN THE COURT OF APPEALS.

CHENANGO BRIDGE,
ag'st.
BINGHAMTON BRIDGE.

On the first argument in this Court, which was by submission, the Court being divided, no judgment was rendered and a re-argument was ordered. At that term Justice Smith gave the following opinion. After saying that the alleged restrictive words in the Delaware charter *have* application to the Chenango charter, he holds that such a provision does not preclude the Legislature in the following terms.

"II. Assuming, then, that the chartered rights of the plaintiffs are those conferred and defined in the said act of 1805, as modified by the act of 1808, and that section 31st of the act of 1805 applies in full force to plaintiffs' company, and is part of their charter, the inquiry remains: What is the true force and effect of the provisions in said section?

The plaintiffs' charter, therefore, must be construed and considered as containing the express provision *"that it shall not be lawful* for any person or persons to erect any bridge or establish any ferry across the Chenango river within two miles either above or below the bridge erected by them."

The provision, I conceive, was intended to operate as a mere restriction upon individuals, public officers and authorities, and other corporations, and was not intended to be or to constitute any restriction upon the sovereign authority of the state, and does not involve any surrender of the rights on the part of the legislature to grant, in its discretion, such other charters as it may deem required by the public interests.

The Chenango river is a fresh water stream, in which the tide does not ebb and flow, and is therefore a private river. The riparian proprietors own the bed and banks. As early as 1798 it was declared a public highway, but subject

to the public easement for the purpose of navigation. The riparian owners might make such use of it as they pleased; might bridge and dam it, except as prohibited by acts of the legislature, and might cross it with ferries, except as so forbidden.

In 1797 an act was passed providing for the opening and construction of highways and bridges, by superintendents and commissioners of highways; and in the same year provision was made to authorize and regulate ferries within the state—forbidding the establishing and use of any ferry, for profit and hire, unless duly authorized, and conferring authority upon the courts of common pleas in each county of the state to grant licenses for keeping ferries, as many and to such persons as the court shall think proper.

The provision of section 31st, in the plaintiffs' charter, declaring that it should not be lawful for any person or persons to erect any bridge or establish any ferry within two miles of the bridge, &c., doubtless applied to all the superintendents and commissioners of highways, and to the courts of common pleas, and to all private persons. The legislature clearly considered that it had a right to impose such restriction upon public officers and private persons, and clearly intended so to do; for the said section 31st contains a proviso as follows; "Provided, nevertheless, that nothing herein contained shall be construed to prevent any person residing within two miles of the said bridges, from crossing the said river to or from his or her house or land, with his or her own boat or craft, without being subject to the payment of any toll."

It will thus be seen that there were sufficient persons and officers and public authorities for the provision in the said section to apply to, so that it might have full effect without extending its operation to the state or the legislative authority. Without this provision, the superintendent of highways for the county, and the commissioners of highways of the town and towns contiguous to the Chenango river, might have laid out highways and constructed bridges across said river at such places as they deemed proper; and the court

of common pleas might have allowed ferries to be established across the same, so as entirely to destroy the plaintiffs' franchise.

It is not necessary, therefore, to give full force and effect to the language of this section 31, to hold that it is or was intended to be a restraint upon the legislative power.

In grants by the public to corporations, nothing, we have seen, passes by *implication*. (8 *Peters*, 289 *and n.; id.* 548.)

Most especially should this rule be applied to grants which are claimed to deprive the legislative authority of its powers to promote the best interests of the public by appropriate and needful legislation. Judge Taney, in the *Chas. River Bridge case* agt. *Warren Bridge*, says: "A state ought never to be presumed to surrender their power, because the whole community have an interest in preserving it undiminished. And where a corporation alleges that a state has surrendered its powers of improvement and public accommodation, the community have a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear."

Judge Black, also, in the case of the *Pennsylvania Railroad Co.* agt. *Canal Commissioners* (9 *Harris* 21 *Penn. H.* 22,) states this rule with great explicitness. He says: "When a state means to clothe a corporation with a portion of its own sovereignty, and to disarm herself to that extent of the power which belongs to her, it is so easy to say so, that we will never believe it to be meant where it is not said." (See also *Richmond R. R. Co.* agt. *Louisa R. R. Co.* 13 *Peters*, 81.) In this state the same rule was asserted by Chancellor Walworth in *The Mohawk Bridge Co.* agt. *The Utica R. R. Co.*, (*5th Paige*, 654) In that case it appears that the Mohawk company claimed an exclusive right to carry passengers across the Mohawk river at Schenectady, and that that right extended one mile above and below their bridge, and restricted also the right to erect ferries. The precise language of the act under which such claims were made, aside from the charter authorizing them to erect and maintain a toll

bridge across said river, and receive and demand toll, etc., was as follows: "that after said bridge shall be built and completed it shall not be lawful for any person or persons to erect or to keep any ferry or bridge over the said river, at any place above said bridge, within one mile from said bridge, or below the said," etc. (Sess. Laws of 1805, 586, 7.)

The chancellor says of this charter: "The legislature has indeed protected the Mohawk Bridge Company in the enjoyment of an exclusive right to carry passengers across the river at Schenectady, to a certain extent, by prohibiting others from establishing a ferry within a certain distance from the toll bridge; but it has not deprived a future legislature of the right to authorize the erection of another bridge within the prescribed limits whenever the public good shall appear to require it."

In 1st *Barb. Ch. R.* 548, in case of the *Oswego Falls Bridge Co.* agt. *Fisher*, the chancellor again asserted the same doctrine, referring to the case of the Mohawk Bridge Company, and says he came to the conclusion in that case that the grant to a corporation to erect a toll bridge across a river, without a restriction of the power of the legislature to grant a similar privilege to others, would not deprive a future legislature of such power. The charter of the Oswego Bridge Company contained no express words of restriction, and these two therefore are not in point upon these facts, but are cited as an opinion of the learned chancellor on the point in controversy. The case of *Thompson* agt. *The N. Y. & Harlem R. R. Co.* (3 Sand. Ch. 628,) is quite like this. The language of the act incorporating the defendants was the same as used in the thirty-first section of plaintiffs' charter.

It is as follows: "That it shall not be lawful for any person or persons whatsoever to erect, or cause to be erected, any other bridge on or across said Harlem river."

It was held by the learned vice chancellor that this language did not restrict the authority of a subsequent legislature to establish or allow a toll bridge or ferry at the same place.

In *The Tuckahoe Canal Co.* agt. *The Tuckahoe & James River R. R. Co.* (11 *Leigh*, 42,) it was held by the court of appeals of Virginia, that to give a monopoly to a corporation, there must be an express provision in the charter whereby the legislature restrains itself from granting charters for rival and competing works.

Such is the head note of the case.

The plaintiff had a charter for the construction of a canal, and the legislature granted a subsequent charter to a railroad corporation to construct its road across the plaintiff's canal and along the same route. It was claimed that this was not an infringement of the plaintiff's exclusive rights. The case was very elaborately discussed and carefully considered, and was decided upon the same ground, and upon the authority in part of the case of the Charles River Bridge agt. Warren.

It is not in its facts precisely in point, but is in the doctrine and principles it asserts. The learned judge, who gave the opinion of the court, says: "Monopoly is not a matter of inference; it must rest its pretensions upon express grant; it is a restriction upon common rights, and upon the legislative power, and cannot be implied;" also, speaking of charters for canals and railroads, he says further, that by charters of this description the legislature is not deprived of the power of granting charters to other companies, even side by side with the former, and in the same line of travel, provided there is no express restriction upon their power in the first act of incorporation.

The case of the Boston & Lowell R. R. Co. agt. The Salem & Lowell R. R. Co. and others (2 Gray, 1) is I think, in principle, to the same effect.

This was a bill in equity to protect the rights of the plaintiff for the construction of a second railroad in competition with their railroad, and for an injunction.

The plaintiff's road was constructed under a charter for an incorporation to construct a railroad from Boston to Lowell, granted by the legislature in 1830. The legislature subse-

quently granted charters for other railroads, which, by consolidation and agreements, had in effect constructed a road competing with the plaintiff's road. In the plaintiff's charter, section twelve, is the following provision : "Be it further enacted, that no other railroad than the one hereby granted, shall, within thirty years from and after the passing of this act, be authorized to be made, leading from Boston, Charlestown, or Cambridge, to Lowell, or from Boston, Charlestown or Cambridge to any place within five miles of the northern termination of the railroad hereby authorized to be made ;" provided the state may authorize any company to enter with another railroad at any point of said Boston and Lowell railroad, paying for the right to use the same or any part thereof, such a rate of toll as the legislature may from time to time prescribe, etc.

This is clearly an express restriction upon the legislative power to grant charters for other railroads to compete with the Boston and Lowell company, within the prescribed term of thirty years, except upon the term specified in the said act of incorporation. It was clearly a legislative contract to that effect within all the cases.

Judge Shaw, in giving the opinion of the court, speaking of the provision in the above mentioned twelfth section of the plaintiff's charter, says : "It was certainly a stipulation on the part of the government, regulating its own conduct and putting a restraint upon its own power to authorize any other railroad to be built with the right to levy a toll ; but without any authority from the government no other company or persons could be authorized so to make a railroad and levy toll, and, of course, no other such road could lawfully be made. It was therefore equivalent to a covenant of quiet enjoyment against its own acts, and those of persons claiming under it." This is, in fact, all the government could stipulate.

The learned judge says further, that they "were of the opinion that under the form of the words used, that no other railroad should be authorized for thirty years,' the govern-

ment, so far as it has the power to do, intended to engage with the corporation that no other direct railroad between Boston and Lowell should be legally made."

The decision of this case was thus put upon the express language of the charter: "that no other railroad should be authorized to be made," etc., etc.

The rule asserted in these cases, that nothing in the shape of monopoly or special privilege shall be taken from the government, except by express grant, is eminently sound.

The history of the legislation of this state and country, for the last fifty years, illustrates its importance and vindicates its wisdom.

So numerous and various are the schemes and devices of the spirit of monopoly among our people, and so artful, insidious and successful the contrivance of speculators and jobbers to secure special grants and privileges from legislative bodies, that the public interests imperatively demand of the courts the firm and faithful assertion of the rule that nothing shall be taken from the sovereign authority by implication; that whoever claims that the legislature has relinquished its power to legislate for the public good upon any subject, should show a legislative grant for each surrender of power, in clear, express and explicit language; so clear and unequivocal that no one, however poorly informed, who may chance to reach the legislative hall, can mistake its meaning or assent to its passage upon any ground of error, mistake or misconception.

Such should be, and such I think is the rule for the construction of legislative grants; and no court, as I can conceive, in this country, will discharge its duty to the public which asserts or assents to any other. The plaintiffs' charter contains no such stipulation on the part of the legislature of the state, relinquishing its power to grant other charters for bridges over the Chenango river as the public interests may require.

The act granting the defendants authority to construct a bridge over said river, therefore, is entirely within the lawful

power and discretion of the legislature. It follows that the plaintiffs' complaint was properly dismissed, and that the judgment of the court below, affirming such judgment, should be affirmed with costs.

IN THE COURT OF APPEALS.

CHENANGO BRIDGE, *ag'st.* BINGHAMTON BRIDGE.

On re-argument in this Court, the judgment was affirmed, and the opinion of the Court (prevailing one,) was as follows:

WRIGHT, J. The Constitution of the United States declares that "no state shall pass any law impairing the obligation of contracts." (U. S. Con. art. 1, § 10.) The provision interpreted by the light of history has been supposed by many only to have been intended to apply to executory contracts; but a more extended interpretation has been given to it by that court which possesses the ultimate right of passing upon the question, and whose decisions we are bound to respect and follow as the law of the land. Not only has it been settled that an executory contract, but also that a grant or executed contract, comes within the scope of the provision, and that a legislative grant of a franchise to a corporation to maintain a bridge or ferry, or turnpike route, is a contract, if the grant be accepted, within the meaning of the section, which no subsequent legislature can interfere with, even to promote the public good, if by such interference the private interests of the corporation are affected. (Fletcher agt. Peck, 6 Cranch, 87; Dartmouth College agt. Woodward, 4 Wheat. 518; Green agt. Biddle, 8 Wheat. 2; Gordon agt. The Appeal Tax Court, 3 How. 133; State Bank of Ohio agt. Knoop, 18 How. 369.) It may be doubted whether it was wise and legally sound to attribute to a legislative act granting to a corporation an exclusive right to maintain a bridge or ferry and exact compensation from the public for crossing a stream at a given point, the force of a contract within the constitutional provision; but such is clearly the doctrine and effect of the series of adjudications referred to. It is no

longer to be questioned, that a private company to whom a state legislature has in express terms granted the exclusive right of maintaining a bridge and exacting tolls for crossing a stream at a designated locality, when the franchise has been accepted and acted under by the corporation, and no power is reserved to alter or repeal the law, is protected, even though the public interests may suffer, by the constitutional prohibition, against any subsequent legislation which is or permits a direct interference with the enjoyment of the franchise or diminishes its value. Any law of that character, it is held, impairs the obligation of the contract between the state and the corporators, and is within the purview and prohibition of the federal constitution. The right, however, alleged to have been impaired or invaded, must have been given or granted expressly, and will not be implied. Public grants are to be construed strictly, and neither individuals or corporators will be deemed to have acquired rights as against the state by implication. In the grant of privileges to a corporation nothing passes but what is granted in clear and explicit terms, and by words too plain to be mistaken. When a state, says Judge Black, in the case of The Pennsylvania R. R. Co. agt. The Canal Commissioners (21 Penn. R. 22), means to clothe a corporate body with a portion of her own sovereignty, and to disarm herself to that extent of the power that belongs to her, it is so easy to say so that we never will believe it to be meant when it is not said. In the construction of a charter, to be in doubt is to be resolved, and every resolution which springs from doubt is against the corporation. If the usefulness of the company would be increased by extending them (privileges), let the legislature see to it; but remember that nothing but plain English words will do it. The wisdom of such a rule of construction will not be questioned by any one who has at heart the safety and preservation of his state government. (Richmond R. R. Co. agt. Louisa R. R. Co. 13 How. 71.)

The plaintiffs were incorporated in 1808 by a single section of an act purporting to amend "The Neversink Turnpike

Road and Susquehanna Bridge Companies," incorporated by a previous act in 1805. This last named act created five corporations, amongst which were two bridge companies, viz: The Delaware Bridge Company and The Susquehanna Bridge Company. The first to erect and maintain bridges across the east and west branches of the Delaware river, and the other to erect and maintain a bridge across the Susquehanna river at Ouquaga, and another across the Chenango river at or near Chenango Point. The section referred to as incorporating the plaintiffs was without detail, except as to the amount of capital, simply providing that "for the purpose of erecting and maintaining a toll bridge across the Chenango river at or near Chenango Point, the present stockholders of the Susquehanna Bridge Company, or such others as should associate for that purpose before the first day of January next, shall be and hereby are created a body corporate in fact and in name, by the name of 'The Chenango Bridge Company,' and as such to have perpetual succession under all the provisions, regulations, restrictions, clauses and provisions of the beforementioned Susquehanna Bridge Company; and their capital in stock shall consist of ten thousand dollars." (Laws of 1808, ch 119.) It will be observed, therefore, that there was no legislative grant in terms of the rights and privileges to be possessed and enjoyed by the corporation; but the intent is plain that they were to be the same as those granted to the Susquehanna Bridge Company, not only in its original charter, which provided for the erection and maintenance of both bridges, but also by the amendment of such charter in the incorporating the plaintiffs.

In pursuance of this act the plaintiffs' corporation was organized and proceeded to erect a bridge across the Chenango river at the point designated, and about eighty rods from the southerly termination of such river. For more than half a century they have maintained the bridge, and have reaped therefrom, for the last thirty years, in the way of dividends on the capital stock, nearly seventeen per cent. per annum. In the meantime Chenango Point, now called Binghamton,

Bridge Company. Of course the intention by the general language was not to import into the Susquehanna Bridge Company's charter the provisions *in hæc verba* of the sections of the act creating the Delaware Bridge Company; but I think the intention is plain to invest the former company with all the powers, rights and privileges pertaining to a bridge corporation, as such, and similar to those which had just been given and accorded to the latter, subjecting it to like duties, regulations and restraints. All the provisions of the act in respect to the Delaware Bridge Company which related to its corporate powers; the manner of organization; the kind of bridge to be erected, and when to be completed; the right to erect gates at either end of the bridges, and demand and receive tolls; the neglect to repair or rebuild, which was to work a forfeiture of the charter; the duties enjoined in respect to the care and superintendence of the bridges, and the penalties imposed and to be enforced, were made applicable to the Susquehanna Bridge Company, and the section incorporating it should read as though similar provisions were literally embodied in it. But it is insisted that if this were all, there could be no pretext that the alleged bargain between the state and the plaintiffs embraced any engagement from the state, that competing bridges or ferries should not be erected or allowed for the distance of two miles above and below their bridge Hence it is sought to further import into the charter of the Susquehanna Bridge Company a provision of the act, limited in words, to the bridges to be erected by the Delaware Bridge Co. across the east and west branches of the Delaware river. The thirty-first section of the act provides "that it shall not be lawful for any person or persons to erect any bridge or establish any ferry across the said west and east branches of the Delaware river, within two miles above or below the bridge, to be erected and maintained in pursuance of this act," etc. It is assumed that this provision, although not in express terms, was tantamount to an engagement on the part of the state, which entered into and formed a part of the contract with the

Delaware Bridge Company, that no competing bridge or ferry should be erected or allowed during the continuance of the corporation, for two miles above and below the bridges; that the exclusive privilege thus given was carried by force of the general words employed into the Susquehanna Bridge Company's charter; and as the plaintiffs were endowed with the rights, privileges and capacities of the latter company, not the identical monopoly, but a similar one, this privilege over the waters of the Chenango river was secured to them.

I think this position not tenable, for reasons that will be stated:

1. The privilege, whatever may be its character, is not given in terms to the Chenango Bridge Company; nor does the provision relate to a monopoly of the waters of the Chenango river, but on the contrary the words of the act limit the prohibition to the west and east branches of the Delaware river. But it is claimed that the legislative intent is manifest, that the plaintiffs were to possess and enjoy the "rights, privileges and advantages" of the Delaware Bridge Company, and as one of those "advantages" consisted in a monopoly of the streams on which their bridges were to be erected, for two miles each way from the bridges, a like monopoly of the Chenango river was intended to be given to them. The acts of 1805 and 1808, however, afford no satisfactory evidence that the legislature intended to grant such a monopoly to the plaintiffs. The leading purpose of the act of 1805 was to establish a corporation for making a road from Oxford, in the county of Chenango, to intersect the Newburgh and Cochecton turnpike at a point easterly of the east branch of the Delaware river, and as subsidiary thereto another corporation to open a communication by a turnpike road from Chenango Point to Kingston. The bridge incorporations were but secondary, and, as was afterwards expressed, were created to sufficiently carry into effect the road incorporation. The Chenango road was to cross the west and east branches of the Delaware river, and the west branch of the Kingston or Neversink road, starting from

Chenango Point, the Susquehanna river, and, it might be, the Chenango river. The act first provided for the incorporation of the Newburgh and Chenango Turnpike Company, reserving the power to dissolve the corporation and vest its property in the state, when the income arising from the tolls had paid for making the road, together with an interest on the money expended of ten per cent. per annum. The Neversink Turnpike Road Company was next created, with the same provision as to a dissolution of the corporation and vesting its property in the people of the state. The act then sets forth, in the form of a preamble, the necessity, with the view of sufficiently carrying into effect the foregoing road incorporations, and fully promoting the public convenience, of erecting and maintaining durable and permanent bridges across the Susquehanna and Chenango rivers, and the east and west branches of the Delaware river, at the several places of intersection of the said roads; that from the size and rapidity of the streams, great expense would be necessarily incurred in erecting and maintaining such bridges, and, from the extraordinary freshets and frequent obstructions happening in those rivers, which would endanger the permanency and durability of the bridges, a frequent renewal of the whole capital might be required for rebuilding them, and therefore require a power (not contained in the foregoing corporation) for calling from the stockholders, from time to time, such sums as should be required for upholding such bridges; that these circumstances forbade the policy incorporated in the foregoing road incorporations, that said property should revert to the state; and that it would be most expedient, for the purpose aforesaid, to make two separate and distinct bridge incorporations with powers adequate to the accomplishment thereof in the best possible manner.—The act then proceeds to create a corporation by the name of "The President and Directors of the Delaware Bridge Company," for the purpose, as expressed, of erecting bridges across the east and west branches of the Delaware river, where the turnpike road to be laid out by virtue of the act

should cross the same. Provisions for subscriptions to stock and for properly organizing the company, describing the kind of bridges to be built, and when to be completed; the power to demand and receive certain rates of toll at each of the bridges, and other regulations and restraints followed.

Amongst the provisions was one before stated, declaring "it unlawful for any person or persons to erect any bridge or establish any ferry across the said west and east branches of the Delaware river within two miles above and below the bridges to be erected and maintained in pursuance of the act." The corporation was to have continual succession for the full term of thirty years from the passage of the act, and at the expiration of such time the bridges, with their appurtenances, were to become the property of the state.

The next provision in order was the incorporation of the "Susquehanna Bridge Company," for the purpose of erecting and maintaining a toll-bridge over and across the Susquehanna river at or near Ouquaga, in the county of Tioga (a point of intersection of the turnpike roads), and also for the erecting and maintaining a toll-bridge on the Chenango river at or near Chenango Point (the starting point of the Neversink road). All such persons as should associate for that purpose, and their successors and assigns, were created a body corporate by the name of the Susquehanna Bridge Co., to have perpetual succession, and be invested with the powers, rights, privileges, immunities and advantages, and be subject to all the duties, regulations, restraints and penalties which were contained in the foregoing incorporation of the Delaware Bridge Company; and all the provisions, sections and clauses thereof, not inconsistent with the particular premises contained in the section creating the Susquehanna Bridge Company, were fully extended to the latter incorporation. As it was thus provided that this corporation was to have perpetual succession, it could hardly be inferred that it was the original intention that the provision limiting the existence of the Delaware Bridge Company to thirty years, and a reversion of its property to the state, should apply to it;

but the act of 1808 settles any doubt that might have been entertained as to the effect of the general words of the section, by a repeal of the thirty years' limitation, and making the existence of the Susquehanna Bridge Company perpetual, whilst it divided it into two companies.

The policy indicated, therefore, by the legislative action was not the same in respect to the two, and ultimately the three bridge incorporations. The duration of one of them (the Delaware Bridge Company) was limited to *thirty years*, when its bridges were to revert to the state; and it might well have happened that those across the east and west branches of the Delaware river would become state property and free bridges before the turnpike road, of which they were a part, would revert. The others were to exist forever as private corporations, notwithstanding the turnpike road on which they were situated might become public property. It was evidently the purpose of the legislature to offer similar inducements to adventurers, and to place the second road and bridge companies on an equal footing: There is nothing to indicate that in the view of the legislature one of the contemplated bridge enterprises was of more importance than the other, or that it was necessary to hold out greater inducements in the one case than in the other. Certainly, a perpetual bridge franchise in that part of the state was to be regarded as more valuable without an engagement from the state not to sanction competition, than one to continue only for thirty years with such engagement written in it; and it ought not to be assumed, without the strongest evidence, that a legislative act, which cautiously refrained as to one bridge incorporation to bargain away the power of the state for all time to make improvements in a particular section for the public accommodation, intentionally bargained any such power to another corporation in no sense more meritorious.

Can it be said, then, that it was intended to confer larger privileges and advantages on one of the corporations than on the other? I think not. It may have been meant that the

Delaware Bridge Company, which was to endure for thirty years, should enjoy a monopoly of the waters of the two branches of the Delaware river; but it is not a reasonable inference that such a right was designed to be conferred on a corporation created for similar purposes, and in the same legislative scheme to which perpetual existence was given.

A provision forbidding competition by individuals was doubtless of importance at that early period, and it is at all times, to either bridge or ferry proprietors; but it was of especial importance to a corporation that could only look thirty years ahead for a reimbursement of its outlays or for a realization of profits from its franchise. There would be no equality in advantages proffered to bridge companies of equal merit, in a scheme which designedly gave a like monopoly to one whose existence was made perpetual. No satisfactory reason can be assigned for the distinction as to the durability of the charter, unless it be that the legislature only contemplated conferring on the companies, to whom perpetual existence was given, the right to erect and maintain toll-bridges at the points named, without any monopoly of the streams.

Again: The provisions in the Delaware Bridge Company incorporation, declaring it to be unlawful for any one to set up competing bridges or ferries, cannot, by any just interpretation of the act or of legislative intention, be carried into the Susquehanna Bridge Co. charter. Nothing more is to be deemed carried into it by the general words used, than is consistent with the particular provisions of the section creating the last named corporation. A purpose of its creation was to construct a bridge across the Chehango river at or near Chenango Point. It was as well known then as now, both by the legislature and by the applicants for the charter, that the designated locality of this bridge was at the confluence of two rivers, and at a point where the Chenango terminated by emptying itself into the Susquehanna. It would have been an absurd provision to introduce into their charter, that no one should establish a competing bridge or ferry on the Chenango river for a distance of two miles below their

bridge. It was a physical impossibility to give the same monopoly of the waters of the Chenango as was given, as is alleged, to the Delaware Bridge Company on the waters of the Delaware river. It is not to be assumed that the legislature or the parties interested in the application contemplated any such absurdity.

I consider that the section of the act of 1805, making it illegal for any person or persons to erect any bridge or establish any ferry across the west and east branches of the Delaware river, within two miles above or below the bridges to be erected and maintained in pursuance of the act, was in substance a stipulation on the part of the state to the extent expressed, entering into the contracts with both bridge companies, that competition should be prevented. I cannot well see how it can be construed as a restriction upon the sovereign authority. In terms it is a restriction, if at all upon persons, and as such was offered and accepted by the bridge companies. There was no guarantee written in the contract, that if the public exigencies or interest required, the state would not exercise its sovereign power in the premises. Such a stipulation in a contract with the adventurers, it is urged, would have been worthless and illusory. Not at all; but on the contrary, it would have been indiscreet, not to say profligate, legislation, to have bargained away forever state authority over the subject. As a restriction upon individuals, public officers and local authorities, it was of great importance to the adventurers. The riparian proprietors of the streams might have bridged them or crossed with ferries, except as forbidden by acts of the legislature. There were then statutes providing for the opening and construction of highways and bridges by superintendents and commissioners of highways, and also for authorizing and regulating ferries within the state. The establishment and use of a ferry for profit was forbidden, unless duly authorized; and authority was conferred upon the court of common pleas in each county of the state, to grant licenses for keeping ferries to such persons as the courts should think proper. It was

certainly of consequence to the corporators that they should be protected against the otherwise lawful acts of these superintendents and commissioners of highways, courts of common pleas and private persons.

But it is said, that if it was not a restriction upon the sovereign power, the legislature might have rendered the franchises comparatively valueless, immediately upon the completion of the bridges and before the corporators could be reimbursed, by the state establishing free or other bridges within the prescribed limits. This argument supposes that a state will act in bad faith ; which supposition is not to be entertained. All experience attests the fact that the failure to realize any just expectations of remuneration from franchises of this character has never been attributable to broken public faith ; and these applicants for the franchises know and act accordingly. The object in introducing the provision, and the object it was intended to serve, seems to me plain. Without it, the riparian owners might have established a free bridge or ferry ; the superintendents and commissioners of highways might have laid out highways and constructed bridges across the river, and the court of common pleas have allowed ferries to be established across them, so as to have impaired if not wholly destroyed the franchises. There were sufficient parties and officers and public authorities for the provision to apply to, and so that it might have full effect without extending its operation to the state or the legislative authority. It is quite unnecessary to hold that it is or was intended as a restraint upon the legislative power to give full force and effect to the language employed. Certainly the intention to surrender the sovereign authority to private corporations ought never to be implied ; nor should the language of a statute be so construed as to deprive the state of her power to provide for the best interests of the people by appropriate and useful legislation, if it be susceptible of a different and reasonable construction. There is great force in the remark of Chief Justice Taney, in the case of The Charles River Bridge agt. The

Warren Bridge (11 Peters, 420), that "a state ought never to be presumed to surrender this power, because the whole community have an interest in preserving it undiminished;" "and when a corporation alleges that a state has surrendered its power of improvement and public accommodation, the community have a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose to abandon it does not appear."

Upon the whole, I do not think the plaintiffs were entitled to sustain the action. The grant to them was the right to maintain a bridge across the Chenango river at or near Chenango Point, and take certain rates of toll for crossing it; and this was the whole grant. There was no monopoly over the waters of the Chenango river, above and below their bridge, given to them; nor any undertaking by the state, in the act incorporating them, not to sanction competition, nor to make improvements that might diminish their income. In this respect they have no rights to be impaired, and consequently none which the courts are called upon to protect.

The judgment of the supreme court should be affirmed.

Davies and Rosekrans JJ., concurred on both the grounds stated in the opinion. Selden and Marvin, JJ., were for affirmance on the ground that the legislature did not conclude itself; the prohibition of the act is not a restraint of the legislative power."